

# Gambling in America



Commission on the Review  
of the National  
Policy Toward Gambling

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# GAMBLING IN AMERICA

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## FINAL REPORT

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## COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING



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15 October 1976

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President of the United States  
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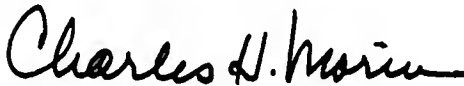
Honorable Nelson A. Rockefeller  
President of the Senate  
Washington, D.C.

Honorable Carl Albert  
Speaker of the House of Representatives  
Washington, D.C.

GENTLEMEN:

In accordance with the provisions of sections  
804-808 of Public Law No. 452, Ninety-first Congress,  
the Commission on the Review of the National Policy  
Toward Gambling has the honor to submit its final  
report of findings and recommendations.

Respectfully yours,

A handwritten signature in black ink, reading "Charles H. Morin". The signature is written in a cursive, flowing style.

Charles H. Morin  
Chairman



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# FOREWORD

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With this Report, the Commission on the Review of the National Policy Toward Gambling concludes its 3 years of research and hearings into the controversial and divisive subject of gambling. Our work is completed; the American people must now judge its accuracy and usefulness. What the Commission has tried to do is to set out what is known about each form of gambling and the possible consequences of its legalization. Based upon the facts contained in this Report, it is now the task of the Congress, and the States as well, to take the next step in developing—for the first time—a fair and reasonable national policy toward the existence of gambling.

This Report and its recommendations will surprise most Americans and may startle some. But those who are surprised or startled should carefully reflect on the significance of the fact that a pastime indulged in by two-thirds of the American people, and approved of by perhaps 80 percent of the population, contributes more than any other single enterprise to police corruption in their cities and towns and to the well-being of the Nation's criminals. If I were asked to describe simply the Gambling Commission's task, I could say it was to find out "why?"

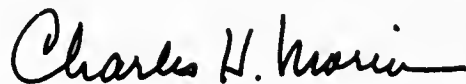
Most Americans gamble because they like to, and they see nothing "wrong" with it. This being so, they see no real distinction between going to the track to place a bet and backing their favorite horse with the local bookmaker. And this truly free-wheeling logic—so consistent with the free enterprise philosophy of most Americans—permeates the country's judicial system: police, prosecutors, and courts.

The Report of the Commission contains a *hard* statement: "Contradictory gambling policies and lack of resources combine to make effective gambling law enforcement an impossible task under present

conditions." Not "difficult"—not "frustrating"—not even "almost impossible"—but *impossible*. And why not? How can any law which prohibits what 80 percent of the people approve of be enforced?

"What should we do about this?" the Congress has asked this Commission. With a small, able, and very dedicated professional staff under the direction of a truly outstanding talent, seven citizens and eight experienced legislators have concluded that a joint venture is necessary between each of the 50 States and the national government, with some significant changes in the pattern of Federal laws. Each of the Commission's recommendations has been warmly debated and carefully thought out, and it would not be considerate to discard any of them lightly.

At its first meeting back in January 1974, the Commission made the decision to pursue its tasks with a small permanent staff and to perform its research function through contractual arrangements with established research firms. The wisdom of this approach was proven early and resulted in very substantial economies in the Commission's budget. But it is the staff itself which must be given the lion's share of the credit for meeting every deadline imposed upon it and for adhering strictly to the budgetary limitations of Congress. James E. Ritchie, the Executive Director, and his Deputy, Marilu Marshall, have truly earned the gratitude of everyone concerned with the national phenomenon of gambling. This Report would never have been possible within the allotted time were it not for these two extremely talented, knowledgeable, and aggressive prosecuting attorneys. It is my pleasure to take this opportunity personally to thank them for all they have done, and I know I speak for every member of the Commission.



Charles H. Morin  
Chairman

# PREFACE

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As Director of this Commission, and as a former Federal prosecutor involved in enforcement efforts against organized crime, I have had a unique opportunity to examine the subject of gambling in its entirety. Until the Commission began conducting its investigations and research 3 years ago, no such examination had been possible. Despite the work of previous study groups and individual scholars, information about gambling law, practice, attitudes, and behavior had been fragmented, inchoate, and often contradictory.

Seeing gambling in such comprehensive detail has considerably broadened my perspective toward it and led me to the inescapable conclusion that we can no longer afford to be ill-informed and complacent about a matter of such manifest national concern. Existing policies that accomplish little for the minority of the people, and frustrate the will of the majority, should not be perpetuated.

Inevitably, in the study of a subject so complex, certain questions remain unanswered and certain issues unresolved. In matters regarding gambling, particularly, many issues can only be decided ultimately by each individual according to his conscience. This is as it should be. Neither this Commission nor any other governmental body should attempt to impose its will on the public—or any segment of it. To that extent, this Report is complete, offering its conclusions and recommendations for the judgment of the American people and their elected representatives, who will best determine the wisdom and value of the Commission's work.

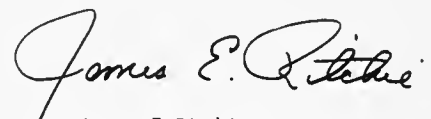
The Commission on the Review of the National Policy Toward Gambling was created by Congress in the Organized Crime Control Act of 1970 (P.L. 91-452). Its mission was to study gambling as it exists in America and to develop recommendations for the States to follow in formulating their own gambling policies. In its 3 years of operation, the Commission staff collected, reviewed, and summarized all available material on gambling. Staff members and consultants prepared more than 30 research

papers and surveys on every aspect of gambling. In addition, the Commission held 43 days of hearings across the country, taking testimony from more than 275 Federal and State law enforcement officials and policy-makers, persons involved in every phase of legal—and illegal—gambling, and ordinary citizens who reflect the way their communities feel about gambling.

I personally would like to thank the members of this Commission, who so generously took time out from their busy schedules to debate the many complex issues before them. And to Charles Morin, our chairman, goes the deep appreciation of everyone connected with the Commission, for his concern, his leadership abilities, his continual encouragement, and his unfailing sense of perspective, which helped balance the diverse views brought to this undertaking.

The Commission is especially grateful to the many people in the industry—including those involved in racing, off-track betting, lotteries, casinos, and bingo—who were so generous with their time and thoughts. And a special thanks must go to the dedicated staff of this Commission, whose diligence and commitment to the project were exemplary. Without all of these people, this Report would not be possible.

The Report that grew out of their contributions represents the Commission's best efforts to develop rational policies toward gambling. This, in fact, is the first time that a national commission has sought to provide methodologically sound research and recommendations on this subject to each State and individual. While some differences of opinion understandably exist regarding the specifics of certain recommendations, this Report as a whole represents the aggregate judgment of all the commissioners. Ultimately, however, it will be the aggregate judgment of other groups of people—the citizens of the various States—who will determine their State's policy toward gambling; if enough of them disagree with a finding of the Commission, they will openly challenge that finding; this is appropriate and a function of democracy.



James E. Ritchie  
Executive Director

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# INTRODUCTION

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Gambling is inevitable. No matter what is said or done by advocates or opponents of gambling in all its various forms, it is an activity that is practiced, or tacitly endorsed, by a substantial majority of Americans.

That is the simple, overriding premise behind all the work of this Commission. Given this fact of life, the Commission has sought to determine the most productive and equitable treatment of this complex social phenomenon. Because it is a social issue, the Commission has determined that gambling policy is the proper responsibility of the government entity closest to the lives of citizens—the State.

This does not mean that gambling is a simple problem which lends itself to simple solutions. Far from it. Gambling is an issue so fraught with ingrained moral and philosophical dichotomies and unresolved social questions that no disposition of the subject can ever come close to being universally accepted. Attitudes toward gambling encompass the most sincere and high-minded ethical beliefs as well as the basest kinds of acquisitive instincts and exploitation.

In developing this Report, the Commission has adhered to an objective, pragmatic approach to its task: If gambling is inevitable, as we are certain it is, then who should regulate it, and how? That is the subject of the chapters which follow. This does not mean, however, that the Commission is insensitive to the invidious and emotional aspects of its subject. It has not addressed these social ramifications of gambling policy directly because, first, they are largely unsusceptible to objective analysis, and, second, because they involve ethical considerations that are beyond the legitimate purview of an investigating body of this kind.

It is important to raise these issues involving the social consequences of gambling to communities, however, because they must be debated by each State as it determines the gambling policies best suited to its citizens. Whatever a State determines its gambling policy to be, these issues will substantially affect its judgment.

**MORAL AND ETHICAL CONSIDERATIONS.** A significant number of Americans believe that gambling in any form is absolutely wrong, on both religious and secular moral grounds. By sanctioning gambling, States may be intruding into areas of sincerely held theological and ethical convictions. One approach to gambling may be to decriminalize it so that the variety of religious beliefs would determine whether an individual gambles or not or whether a community will have legal gambling, rather than letting government engage in something which a

substantial minority believes not simply to be bad policy, but to be religiously wrong. It may be that legalization or decriminalization makes allegiance to government extremely difficult for people with deep moral convictions who are forced more and more to dissent from the actions of their government. It must be asked if the gain for the majority is worth the price of the alienation of the minority.

**GAMBLING AND THE WORK ETHIC.** There is no reliable way to calculate the effect on the work ethic of legalizing or decriminalizing gambling that was previously prohibited. If, through legal gambling, citizens are allowed or encouraged to make a profit or gain through chance rather than through work, the government may be undermining a basic social tenet of our culture.

**GOVERNMENT AS GAMBLING ENTREPRENEUR.** When a large segment of its population finds an activity objectionable, a State must decide whether it should allow and, in effect, promote that activity. Also, many people believe fervently that it is improper for government—especially democratic government in a capitalistic society—to compete in the marketplace with private enterprise and that State-sponsored gambling clearly violates that principle.

**REVENUE VERSUS CRIME CONTROL.** It is axiomatic that the two principal goals of legalized gambling—revenue raising and crime control—are incompatible. The taxation and other tribute necessary to generate significant profits for government may place the legal entrepreneur at an impossible competitive disadvantage with his illegal counterpart, who is not so burdened. If government is seriously to challenge the role of illegal gambling—particularly that part of it controlled by organized crime—then the legal entity may have to offer competitive odds and payoffs. It may also have to eliminate taxes on the bettor and the operator—which would, of necessity, eliminate the likelihood of substantial government revenue. States must determine which goal they should pursue in the formulation of their gambling policies.

**GAMBLING AND REVENUE.** Legislators have sometimes seen legalized gambling with its attendant revenue to State treasuries as a painless, voluntary form of taxation that takes the place of increases in income taxes or sales taxes. In fact, legal gambling is a regressive form of taxation—that is, the poor pay out a greater proportion of their income for it than the rich—while income taxes, at least, are progressive. It is also true that it is cheaper to collect income and sales taxes than it is to collect income from legal gambling games. States might consider lowering

the regressivity of legal gambling by having a maximum payout to players with a minimum profit to the State—in other words, redistributing gambling money in the community that pays it out.

**PRACTICABILITY OF REGULATION.** In many discussions of public policy, much has been made of the potentiality that the regulated will dominate the regulators. There is a danger that a gambling industry's growth can overtake a State's ability to regulate or control that industry. This is especially true for small States where the regulators are few in number and the State is dependent in large part on the income that industry generates. This danger exists, of course, when any industry dominates a State's economy, but States should be especially careful to monitor and control the special interests involved in gambling.

**CREATION OF NEW GAMBLERS.** The Commission's research has shown that the availability of legal gambling creates new gamblers. A government that wishes merely

to legitimize existing illegal wagering must recognize the clear danger that legalization may lead to unexpected and ungovernable increases in the size of the gambling clientele.

This list of social consequences of gambling is by no means exhaustive; gambling policy no doubt involves ramifications that are not yet known or that cannot be resolved until various forms of legal gambling are attempted. The issues enumerated above, however, must be weighed carefully by any State that endeavors to formulate a gambling policy that best satisfies the needs and wishes of its citizens. Indeed, they might well serve as criteria against which States can measure—and perhaps formulate—their own goals and desires regarding the regulation and control of gambling. The issues also represent the first step in a complex social analysis that should continue long after the expiration of this Commission.

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## HIGHLIGHTS OF CONCLUSIONS AND RECOMMENDATIONS

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Following are highlights of the Commission's major conclusions and recommendations, which are directed toward Federal, State, and local governments, law enforcement agencies, and privately operated gambling industries.

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### Chapter 1. National Gambling Policy

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The Commission has concluded that States should have the primary responsibility for determining what forms of gambling may legally take place within their borders. It believes that the only role of the Federal Government should be to prevent interference by one State with the gambling policies of another and to protect identifiable national interests with regard to gambling issues. In line with these conclusions, the Commission recommends:

- That Congress consider enacting a statute that would insure the State's continued power to regulate gambling.
- That the Federal Government, in the exercise of its regulatory and tax powers, take care not to hinder State efforts to compete with illegal gambling operations.

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### Chapter 2. Federal Gambling Statutes

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In its extensive study of Federal gambling statutes—both civil and criminal—the Commission has concluded that a continued Federal effort against certain gambling operations is both necessary and desirable. This finding notwithstanding, the Commission has determined that some of the Federal statutes should be amended and that

the Government's enforcement policies in some areas should be reevaluated. Specifically, the Commission has found that the Federal income tax on gambling winnings is the single greatest obstacle to effective competition with illegal gambling operations; it believes that States which are attempting to compete with illegal gambling should not have their efforts in this direction thwarted by the Federal Government. Also along these lines, the Commission has determined that the Federal wagering excise and occupational stamp taxes interfere with the ability of a legal gambling industry to compete with its illegal counterpart, and that such taxes, if they are to exist at all, are more appropriately levied by State governments. Finally, the Commission has determined that civil remedies against gambling violators ultimately will prove more successful than current criminal statutes in suppressing illegal gambling. In light of these conclusions, the Commission recommends:

- That winnings from legal gambling entities be excluded from gross income for Federal income tax purposes.
- That the provisions of Federal criminal statutes dealing with the interstate aspects of gambling violations be retained and incorporated into a single gambling statute designed to eliminate the overlap and duplication that the current statutes contain.
- That the Federal intrastate gambling statute (18 U.S.C. 1955) be amended in such a manner as to insure that the statute is employed only against the higher level gambling operations of organized crime.
- That the Federal wagering excise and occupational stamp taxes be repealed.
- That the Federal Government make greater use of civil remedies against gambling offenders.

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## Chapter 3. State and Local Gambling Enforcement

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Through its research of gambling law enforcement practices by State and local law enforcement agencies, the Commission has determined that, for a variety of reasons, most local police departments cannot deal effectively with large gambling operations, and that, too often, enforcement efforts are directed against low-level gambling violators while high-level operators remain untouched. Lack of resources, inadequate legal tools, noncooperation by the courts, interjurisdictional problems, and corruption are the principal roadblocks to effective gambling law enforcement by local authorities. To remedy these inadequacies, the Commission recommends:

- That less emphasis be placed on enforcement against low-level gambling offenders and that State and county law enforcement agencies, in conjunction with prosecutors, direct their efforts against high-level gambling offenses, particularly bookmaking and numbers operations.
- That specialized gambling units be created in State and large urban police departments.
- That States consider removing statutory prohibitions against public social gambling.
- That States having a substantial amount of illegal gambling authorize the use of electronic surveillance in gambling cases where such authorization does not presently exist.
- That prison terms and substantial fines be imposed for major gambling offenders, particularly persons known to be associated with organized crime.

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## Chapter 4. Survey of American Gambling Behavior

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The Commission has examined the results of its comprehensive gambling survey and concluded that the great majority of the survey's findings are accurate and reliable. However, the Commission takes issue with the survey's findings in one area—the volume of illegal gambling that takes place each year. The Commission has determined that the survey's estimate of \$5 billion for the volume of illegal gambling is too low, and it has concluded that as long as certain extremely popular forms of gambling remain illegal, an accurate determination of the amount of such gambling that occurs is impossible to achieve by any method. Following are highlights of the survey's findings regarding the gambling habits and attitudes of Americans:

- Sixty-one percent of the adult population—about 88 million people—participated in some form of gambling in 1974. Of these, some 19 million wagered only with friends in a social setting, and about 69 million people—48 percent of the adult population—patronized some form of legal or illegal commercial gambling.

- Information compiled on gambling activity in Nevada reveals that more Nevadans gamble, gamble more frequently, and spend more on gambling than the Nation's population as a whole. This indicates that the widespread availability of legal gambling increases the gambling population and rate of participation.
- Almost 80 percent of respondents nationwide said they favored legalization of some form of gambling, but no single form received majority support for legalization in a State where it was not already legal. Opposition to legalization was strongest against numbers and sports betting—particularly on high school and college events.
- Participation in illegal gambling is greater in States where limited legal gambling is available than in States where no form of gambling is legal.

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## Chapter 5. Legal Gambling Industries

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The Commission studied the five principal forms of legal gambling—casinos in Nevada, parimutuel horseracing and dogracing, off-track betting, lotteries, and bingo.

With respect to casinos, the Commission has concluded that Nevada State gambling regulations are on the whole sufficiently stringent and that enforcement of the regulations is sound. It has also found that the influence of organized crime in Nevada casinos has been significantly reduced during the past 10 years. Nevertheless, it has determined that some aspects of Nevada casino gambling should not be reproduced elsewhere.

In the area of parimutuel racing, the Commission found that, in most States, the takeout—money not returned to bettors—is too high. It also found that a serious potential for conflict of interest exists when racing commissioners are permitted to hold financial interests in racetracks they regulate. On the issue of off-track betting, the Commission has concluded that the passage of a Federal law banning all interstate off-track betting would interfere with each State's ability to determine its own gambling policies and that such interference undermines the national policy toward gambling recommended by the Commission. Regarding lotteries (and off-track betting), the Commission has found that the active publicity given these forms of gambling by the States induces citizen participation contrary to the public's best interest. Finally, the Commission has found that commercial bingo operators running games for the benefit of charitable groups often retain most of the profits for themselves.

In accordance with these findings, the Commission recommends:

- That States contemplating the legalization of casinos (1) incorporate a series of player protection provisions into State regulations; (2) establish casinos that are operated by private industry rather than government; and (3) refrain from building casinos in urban areas where lower income people reside.

- That the on-track takeout in parimutuel racing be reduced in order to increase revenues to the racing industry, the bettors, and, ultimately, to the State, which will benefit from a more prosperous industry.
- That racing commissioners be prohibited from holding any financial interests in racetracks within their jurisdiction and that States enact legislation requiring full disclosure of all financial interests in the operation of racing meetings.
- That Congress not pass a pending bill that would abolish all interstate wagering, and that, instead, States desiring to insure that no interstate wagers be taken on races within their borders pass prohibitory legislation to this effect.
- That States fully inform the public of the odds of winning in all types of lotteries and limit their lottery promotions to advertisements informing the public of the existence and nature of the game offered, and that the same advertising restrictions apply to government-operated off-track betting systems.
- That State regulators require bingo operators to provide full public disclosure of the percentage of total wagers received by the operator, the players, and, where applicable, the charity sponsoring the games.

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## Chapter 6. Illegal Gambling Industries

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The Commission has found that the three principal forms of illegal gambling today are numbers, horse bookmaking, and sports betting. It has determined that while large illegal gambling casinos once could be found in every city in the country, such establishments have been virtually eliminated as a result of Federal legislation enacted during the 1960's. However, the Commission did find some evidence that small illegal casinos, generally offering only one or two games, still exist in some areas.

Through hearings around the country, and from testimony by law enforcement officials, defense attorneys, and persons involved in illegal gambling, the Commission has determined that there is no uniformity of organized crime control of gambling throughout the country; in

some cities such control exists; in others, not. The Commission rejects the notion that organized crime controls all illegal gambling or that all illegal gambling provides revenues for other illegal activities. Accordingly, the Commission has concluded that independent operators of illegal gambling pose a less serious threat to society than operators who are part of a syndicate or members of organized crime, and that such independent illegal gambling businesses generally should not be the target of Federal law enforcement investigations.

The Commission has examined all of the arguments presented to it in support of and in opposition to the legalization of sports-by-event wagering. It has concluded that a legal single-event sports wagering system would provide relatively little revenue for the State, and it has determined that existing Federal tax policies make effective competition with illegal bookmakers impossible. The Commission believes that a sports betting operation that is unable to compete with the illegal operators is in grave danger of creating many more customers for the illegal bookmakers. Consistent with these findings, the Commission recommends:

- That States refrain from legalizing single-event sports wagering under the present structure of Federal taxation.
- That in the event Federal tax policies are amended, as recommended by this Commission, States considering legalization provide for extensive public debate on the issue to take place.
- That States which decide to legalize single-event sports wagering incorporate into their enabling legislation a prohibition against wagering on amateur sporting events.
- That States choosing to legalize sports card wagering not do so under existing lottery statutes but, rather, offer a specific voter referendum on the issue.

The foregoing comprises only a partial listing of the Commission's recommendations. The chapters that follow include many additional recommendations along with more detailed explanations of the reasoning behind the Commission's conclusions. The reader also will find substantial historical gambling information in the ensuing pages along with in-depth descriptions of the many games that constitute the American gambling phenomenon.

# CHAPTER 1. THE NATIONAL POLICY TOWARD GAMBLING

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**THE NATIONAL POLICY TOWARD GAMBLING:** The Commission believes that the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders. The Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests. The Commission recommends that Congress consider enacting a statute to insure the States' continued power to regulate gambling.

One of the foremost concerns of the authors of the United States Constitution was how to divide authority between the National Government and the States. While numerous powers were explicitly delegated to the Federal Government, many others were reserved as matters for State control. The precise definition and scope of those powers have been the subject of long-standing debate.

Throughout American history, the prohibition and regulation of gambling activity has largely been a function of the States. Federal involvement with gambling did not begin until the late 19th century, when Congress put an end to the operation of corrupt lotteries by denying them the use of the mails and the ability to transact business across State lines. The States had been deemed incapable of dealing with this problem themselves, since only the Federal Government had jurisdiction over the interstate aspects of lottery operations.

The next significant Federal action dealing with gambling did not occur until 1949, when Congress enacted legislation to eliminate the gambling ships which had been operating off the coast of California. In the years that followed, the determination that organized crime had become a national problem resulted in a strengthening of the Federal antigambling effort, since gambling was believed to be a major source of revenue to the criminal syndicates. The Johnson Act, passed in 1951, limited the interstate transportation of gambling devices. Statutes enacted in 1961 prohibited the interstate transmission of wagering information, the interstate transportation of

gambling paraphernalia, and the use of interstate commerce facilities to aid an illegal gambling enterprise. The Organized Crime Control Act of 1970 further extended Federal jurisdiction over gambling, making it a Federal offense to operate certain illegal gambling businesses, without requiring proof of any specific interstate element, and subjecting gambling-related bribery of State and local officials to Federal prosecution. In each case, Federal action was seen to be necessary because of the inability of the States to solve a problem by themselves. Federal legislation in the gambling area has also been predicated on the need to prevent the facilities of interstate commerce from being used so that the gambling policies of some States interfere with the gambling policies of other States.

In addition, Congress has affected gambling activities through the exercise of its taxing powers, by levying excise and occupational taxes on gambling operations and a stamp tax on gambling devices, and by subjecting gambling winnings to the Federal income tax.

With those exceptions, the determination of the legal status of gambling-related activities has been left to the States, although the Federal Government may retain exclusive jurisdiction over gambling that occurs on Federal enclaves, such as Indian reservations and military posts.<sup>1</sup> Congress has enacted legislation from time to time to control gambling in those locales.

There is great diversity among the States concerning legalization of the various forms of gambling. Thirty-one States permit parimutuel wagering on horseracing, 13 States conduct lotteries, 1 State sanctions casino gambling and sports bookmaking, and varying treatments exist for dogracing, bingo, card playing, and off-track betting. To a considerable extent, these different State policies have resulted from the holding of referendums, in which the people themselves have directly determined the policies of the States. Further, States differ in their criminal prohibitions of gambling—for example, some States, like Indiana, make it a crime to place a bet, while in others only the operator of the game is punishable.

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## THE NEED FOR FEDERAL RESTRAINT

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This diversity of treatment reflects the fact that the populations of the States differ in their views on gambling. The Commission does not believe that the Federal Government, which represents the Nation as a whole, should substitute its judgment for that of the individual

States in this area. Gambling has customarily been controlled by State agencies, which can be flexible and responsive to local demands; the Commission finds no public interest in preempting this authority by the imposition of binding national standards. While we express

no predisposition on the appropriate roles of State and Federal Governments in the regulation and control of other activities, we do believe that where gambling is concerned there should be a considered reluctance on the part of the Federal Government to interfere with State policies. To the States should be left the determination of what forms of gambling, if any, are to be permitted; how to operate or regulate those forms of gambling that are authorized; and what the objectives of any changes in present laws are to be, based upon such criteria as those analyzed by the Commission later in this Report. From a purely pragmatic standpoint, this should result in the evolution of more efficient and representative gambling policies in the United States, as different States experiment with different approaches, discarding those that are unsuccessful and emulating those that have been effective in other States. The Federal Government, in the exercise of its regulatory and tax powers, should not unnecessarily impair State efforts to compete with illegal gambling operations. And States that choose not to give legal sanction to gambling in some or all of its forms should not have it imposed upon them by either their sister States or the Federal Government. We recognize that some would urge a stronger role for the Federal Government, and would have Congress exercise every opportunity to control gambling, such as by denying even legal State gambling operations the access to interstate facilities. We believe, however, that the States are capable of making such judgments, and that the Federal Government should not subject them to arbitrary restraints.

There are, however, instances where positive action by the Federal Government may be necessary to the protection of identifiable national interests. Where gambling is connected to organized criminal syndicates of interstate dimensions, Congress should act to suppress it.

Where gambling is the cause, or the result, of a systematic corruption of State or local law enforcement officials, Congress should impose a remedial Federal presence. Where gambling operations are too widespread and complex for State agencies to handle, Congress should step in to assist them. Federal law enforcement projects may also be designed to demonstrate how effective gambling prosecutions can be carried out at the State level.

The proposition that the States should determine their own gambling policies is consistent with the historical role played by the Federal Government. Congress has generally protected the autonomy of the States, exempting gambling which is legal in the State where it occurs from the application of the Federal criminal laws. Indeed, Congress has justified its actions as designed to assist the States in the enforcement of their gambling laws. Accordingly, a national policy which assigns to the States the determination of what forms of gambling are to take place is merely a reaffirmation of the present position of the Federal Government. To the extent that the Federal gambling statutes interfere with the ability of the States to set their own gambling policies without the presence of an overriding national concern, these statutes should be revised. And to the extent that the practices of the Federal agencies vary from this standard, they should be changed. Therefore, the enforcement history of each Federal gambling statute has been analyzed by the Commission to determine if the effect of the law is compatible with the national policy.

In addition to reviewing the utilization of particular Federal gambling statutes, it is necessary to determine if the body of Federal gambling law taken as a whole interferes with the ability of the States to determine their own gambling policies.

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## TAXATION

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In many States, gambling has been deemed an appropriate method of raising revenue to support the costs of government, either through direct State operation or a system of licensing fees and taxes. The authority of the Federal Government to tax these State gambling operations cannot be questioned.<sup>2</sup> The Constitution contains no express limitations on the power of Congress to tax the instrumentalities of State government, and the Supreme Court has rejected the argument that activities unessential to the preservation of State government should be immune from Federal taxation, even if the Federal tax is collected from a State treasury.<sup>3</sup>

Moreover, "a federal excise tax does not cease to be valid merely because it discourages or deters the activities taxed. Nor is the tax invalid because the revenue obtained is negligible." Even the intent of Congress "to curtail and hinder" the activity subject to the tax does not necessarily invalidate the legislation, so long as the intent to tax is also present.<sup>4</sup> Accordingly, the Supreme Court has upheld the Federal excise and occupational tax on wagering,<sup>5</sup> which

applies to certain types of gambling regardless of whether State law permits such activity.

Nevertheless, the Commission believes that Congress should take great care in the exercise of its taxing powers so as not arbitrarily to discourage State policies. Not only might the Federal Government stifle State initiatives in raising revenues to meet the expenses of State and local government, but Federal taxes on State gambling operations may render State governments incapable of competing with those illegal games they seek as a matter of State policy to eliminate through the provision of a legal alternative. The Federal Government should cooperate fully with the States, so that inflexible taxation policies do not bring about unintended results. As Alexander Hamilton, who became the Nation's first Secretary of the Treasury, cautioned in the Federalist Papers,

As far as an improper accumulation of taxes, on the same object, might tend to render the collection difficult or precarious, this would be a mutual inconvenience, not arising from a superiority or defect of power on either side,



but from an injudicious exercise of power by one side or the other, in a manner equally disadvantageous to both. It is to be hoped and presumed, however, that mutual interests would dictate a concert in this respect, which

would avoid any material inconvenience.<sup>6</sup>

We believe that the admonition of Hamilton is still appropriate.

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## COMMERCE CLAUSE

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Gambling-related activities have traditionally been considered within the States' general police power to regulate, and Federal law enforcement jurisdiction over gambling-related activities has been limited to the power of Congress to regulate interstate commerce.<sup>7</sup> Over the years, the scope of Federal powers under the Commerce Clause has greatly expanded, with Congress reaching activities previously thought to be beyond its authority.<sup>8</sup> The Organized Crime Control Act of 1970 for the first time<sup>9</sup> made certain violations of State gambling laws Federal offenses "whether or not an interstate connection or effect is established for the particular crime."<sup>10</sup> Deferring to the findings of Congress that illegal gambling businesses of a given size per se have an effect upon interstate commerce,<sup>11</sup> the courts upheld the statute under the theory that "where Congress has the power to regulate a clearly defined class of activities, it is not necessary to show an interstate connection in any particular case."<sup>12</sup> Thus, even purely local gambling activity can now be the subject of Federal legislation.

The power of Congress to regulate under the Commerce Clause "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution."<sup>13</sup> And if a State law "comes into contact" with a Federal regulation, the Constitution provides that the Federal law is supreme and must prevail.<sup>14</sup> Consequently, given the determination underlying the 1970 act that a sufficiently large gambling operation by its very nature affects interstate commerce, Congress might well adopt a comprehensive Federal scheme of gambling regulations, which could have the

effect of preempting the field.<sup>15</sup> Congress has never expressed this intention; indeed, three of the Federal gambling statutes contain explicit antipreemption provisions,<sup>16</sup> indicating the intent of Congress that its impact be strictly circumscribed. Traditionally, State regulations of such conduct have been permissible so long as they do not unduly burden or discriminate against an activity of interstate commerce.<sup>17</sup> Although these State laws carry a high presumption of validity, the restriction imposed by the Commerce Clause is important, since it places a potential limitation on the ability of the States to permit or prohibit gambling activities within their borders.<sup>18</sup>

It is noteworthy that there has never been a successful judicial challenge of a State gambling statute on the grounds that it interfered with interstate commerce. Indeed, this is most unlikely to occur. Nevertheless, the historical development of the Commerce Clause suggests that the expansion of Federal jurisdiction may occur in ways not presently foreseen.<sup>19</sup> Moreover, statutes once enacted by Congress may be interpreted by the enforcement agencies and the courts to have a more extensive scope than their legislative sponsors had anticipated.<sup>20</sup> Because the Commission is charged with recommending gambling policies for the future, any potential problems in the jurisdictional framework upon which our recommendations are based should be anticipated and, where necessary, corrected by remedial legislation. The Commission thus believes that Congress should consider taking action to protect the States' continued authority to determine their own gambling policies.

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## FEDERAL LEGISLATIVE RECOMMENDATION

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An appropriate method of achieving this objective would be the enactment of a Federal statute specifically empowering the States to regulate gambling within their borders.<sup>21</sup> It was by similar means that Congress protected State regulation and taxation of insurance in 1945,<sup>22</sup> after the Supreme Court had held insurance to be an activity of interstate commerce.<sup>23</sup> Congress responded to the Court's ruling by passing a statute consenting to the regulation of the insurance business by the States. The Supreme Court upheld this approach, emphasizing that the statute had put the full weight of Congress behind the State legislation to protect it from attack on jurisdictional grounds.<sup>24</sup> Congress thus established the validity of State insurance regulations,

which otherwise might have been challenged as unreasonable burdens on interstate commerce.

This approach has been taken by Congress and upheld by the Supreme Court in several other areas as well,<sup>25</sup> and it would be equally appropriate if applied to State regulation of gambling. At a stroke, Congress would protect legitimate State gambling statutes—whether civil or criminal—from judicial challenge on the ground that they improperly interfered with interstate commerce, thereby insuring that State autonomy in the regulation of gambling would be reconciled with the authority of Congress to legislate in the national interest. More important, such a statute could provide that Federal

agencies would be unable to interfere with State gambling policies without explicit congressional authorization.<sup>26</sup> This elevation to de jure status of the current de facto policy of the Federal Government to leave the regulation of gambling to the States would, by removing doubt about the scope of State jurisdiction, serve to provide a solid foundation for the future development of sound gambling policies.

The Commission emphasizes that such a statute would not foreclose the authority of Congress to legislate with

respect to gambling where a Federal presence became necessary. Congress could selectively enact statutes concerning those areas which it deemed to involve the national interest, and could act to prevent the channels of interstate commerce from being used by some States to interfere with the gambling policies of other States. We submit that such a protection of State and national interests would conform with the sound principles of federalism upon which this country was established.

# FOOTNOTES

- <sup>1</sup> See Appendix, "Gambling in Federal Enclaves," by Peter W. Waldmeir, Legal Researcher, National Gambling Commission.
- <sup>2</sup> "Enactments levying taxes made in pursuance of the Constitution are, as other laws are, The Supreme Law of the Land, Article VI . . . the first of the powers conferred upon Congress is the power 'To Levy and collect Taxes, Duties, Imports and Excises,' Article I, Section 8 . . . barring only exports (from any State) Article I, Section 9, the Power of Congress to tax reaches every subject." *New York et al v. United States*, 326 U.S. 572, 575 (1945).
- <sup>3</sup> *Helvering v. Gebhardt*, 304 U.S. 405, 411, 419 (1973).
- <sup>4</sup> *United States v. Kahringer*, 345 U.S. 22, 27-28 (1953), overruled on other ground.
- <sup>5</sup> *Ibid.*, 26 U.S.C. 4401, 4411. The unlawfulness of an activity does not prevent its taxation. *License Tax Cases*, 5 Wall, 462.
- <sup>6</sup> *The Federalist*, No. 33.
- <sup>7</sup> "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes," U.S. Constitution, Article I, Section 8, cl. 3.
- <sup>8</sup> Congress has used this clause to establish Federal jurisdiction in such areas as child labor and civil rights.
- <sup>9</sup> Prior to 1970, Federal jurisdiction was based on the "authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses." *Caminetti v. United States*, 242 U.S. 470, 491 (1971); Senate Report No. 91-617.
- <sup>10</sup> Stern, "The Commerce Clause Revisited—The Federalization of Interstate Crime," 15 ARIZ LAW REV 273.
- <sup>11</sup> Senate Report No. 91-617.
- <sup>12</sup> Resch, "The Scope of Federal Criminal Jurisdiction Under the Commerce Clause," 1972; 4 UNIV ILL LAW FOR 815. The holding in *Perez v. United States*, 402 U.S. 146 (1971), establishing Federal jurisdiction over loansharking, has been applied by the Federal courts to syndicated gambling. See *United States v. Ceraso*, 467 F2d 653, 657 (3d Circuit, 1972).
- <sup>13</sup> *Gibbons v. Ogden*, 2 U.S. (9 Wheat.) 1, 196 (1824).
- <sup>14</sup> *Wilkerson v. Rahrer*, 140 U.S. 545, 556 (1891), Article VI, U.S. Constitution (the supremacy clause).
- <sup>15</sup> By way of illustration, State prohibitions in the 19th century of the sale of alcohol were invalidated to the extent that they barred the sale of liquor which had traveled in interstate commerce, since "a subject matter which has been confined exclusively to Congress is not within the police power of the state." *Leisy v. Hardin*, 135 U.S. 100, 108 (1890). There the intent of Congress to maintain free traffic in alcohol was inferred from its silence; in the case of gambling a court might rule that Congress had "occupied the field" to the exclusion of the States. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1946).
- <sup>16</sup> 18 U.S.C. 1084, 18 U.S.C. 1953, Section 811 of the Organized Crime Control Act of 1970.
- <sup>17</sup> See *Southern Pacific v. Arizona*, 325 U.S. 761 (1945). Courts, when considering State statutes that allegedly unduly burden interstate commerce, traditionally "weigh" the State interest involved against the burden that the State law places on interstate commerce. Thus, the higher the State interest, the greater the burden on interstate commerce that will be needed to invalidate the State statute. For authority that the States may tax and regulate interstate commerce if they do not unduly burden it, see the cases of *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U.S. 177 (1938); *General Trading Co. v. State Tax Commission*, 322 U.S. 335; *Parker v. Brown*, 317 U.S. 341; *Huron Portland Cement Co. v. Detroit*, 352 U.S. 440 (1960); *Mintz v. Baldwin*, 289 U.S. 346 (1933);

*Bibb v. Navaho Freight Lines, Inc.*, 359 U.S. 520 (1959).

<sup>18</sup> Chief Justice Melville W. Fuller, writing for the minority in the case which first extended Federal Commerce Clause jurisdiction to gambling activities in 1903, observed that "if lottery tickets had been deemed articles of commerce" in a case recently decided, the State statute "would have been invalid as a regulation of commerce." He went on to ponder whether, "if a State should . . . engage in the business of lotteries could it enter another State, which prohibited lotteries, on the ground that lottery tickets were the subjects of commerce? On the other hand, could Congress compel a State to admit lottery matter within it, contrary to its own laws?" *Champion v. Ames*, 188 U.S. 321, 370 (1903).

<sup>19</sup> See Hirsch, "Federal Regulation of Local Activity: The Demise of the Rational Basis Test," 1972 LAW & SOC. ORDER 683.

<sup>20</sup> For a discussion of agency enforcement policies regarding gambling devices, see op. cit. Resch, 810.

<sup>21</sup> See Appendix, Model Federal Statute, Section 4.

<sup>22</sup> *The McCarran Act*, 59 Stat. 34 (1945). 15 U.S.C. 1011-1015.

<sup>23</sup> *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944).

<sup>24</sup> *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408 (1946). The Court, at 429-430, observed that the purpose of Congress was to "give support to the existing and future state systems for regulating and taxing the business of insurance . . . (by) removing obstructions which might be thought to flow from its own power, whether dormant or exercised, except as otherwise expressly provided . . . (and by) declaring expressly and affirmatively that continued State regulation and taxation of this business is in the public interest and that the business and all who engage in it shall be subject to the laws of the several States in these respects."

<sup>25</sup> This was the method used to "remove the impediment" to the enforcement of State prohibitions of alcohol in the 19th century. Op. cit. *Rahrer*, 564. Congress enacted legislation which gave effect to State prohibitions by forbidding the sale of liquor in a State, even though it had been brought in through interstate commerce, when State law forbade the sale of alcohol. This policy was effectuated in a two-step process. The Wilson Act, 26 Stat. 313 (1890) was upheld in *Rahrer*, *ibid.*, and The Webb-Kenyon Act, 37 Stat. 699 (1913), was upheld in *Clark Distilling Co. v. Western Maryland RR*, 242 U.S. 311 (1917). The ultimate effect was to subject to the police power of the States something that had previously been excluded from their control by reason of its being a subject of interstate commerce. The Supreme Court, in upholding this approach, observed that "Congress has not attempted to delegate the power to regulate commerce . . . it has taken its own course, and made its own regulation, applying to those subjects of interstate commerce one common rule." Op. cit. *Rahrer*, 562. The fact that the effect was to permit different States to treat alcohol in different fashions did not invalidate the legislation, since Congress had decided that the determination by the States of whether alcohol was to be permitted within their borders was a proper way for this aspect of commerce to be regulated. Other examples of consent statutes include the Lacey Act, 31 Stat. 188 (1900), concerning migratory game birds; the Hawes-Cooper Act, 45 Stat. 1084 (1929), concerning convict-made goods; and the Renovated Butter Acts, 32 Stat 193 (1902), concerning oleomargarine. See Note, "Congressional Consent to Discriminatory State Legislation," 45 COLLREV 927, 932 (1945). The staff is grateful for the assistance of Professor Jesse Choper of Boalt Hall.

<sup>26</sup> See Appendix, Model Federal Statute, Section 4.



# CHAPTER 2. FEDERAL GAMBLING STATUTES

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This chapter constitutes the Commission's final review of existing Federal statutes concerning the prohibition, regulation, and taxation of gambling activities. The review includes a discussion of criminal, tax, lottery, and miscellaneous statutes relating to gambling; a study of the congressional intent upon which each statute is based; an analysis of the utilization of each statute, using data provided by the Federal agencies having enforcement

powers in the respective areas, as well as other data gathered through the Commission's independent research and surveys; and a discussion of whether or not each statute is consistent with the national policy toward gambling. The Commission has recommended changes in law or policy wherever it believed the statutes to be contradictory to the national policy or inefficient in the implementation of that policy.

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## CRIMINAL STATUTES

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### Statutes Prohibiting Interstate Gambling Activity

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**18 U.S.C. 1081–1083.** Modern Federal legislation outlawing certain gambling activities began in 1948 with the passage of 18 U.S.C. 1081–1083, prohibiting the operation of gambling ships off the coasts of the United States.<sup>1</sup> The gambling ship statute accomplished its purpose soon after its enactment and casino ships which had become a common feature of the California coast in the 1940's disappeared.<sup>2</sup>

**15 U.S.C. 1171–1177.** The Special Senate Committee to Investigate Organized Crime in Interstate Commerce, headed by Senator Estes Kefauver, was established in 1950. It produced a group of statutes, 15 U.S.C. 1171–1177, known as the Johnson Act, which prohibits the interstate transportation of gambling devices. The act was aimed at "nation-wide crime syndicates"<sup>3</sup> inasmuch as the major distributors of such devices during the 1940's were determined to be financed by organized crime. According to the legislative history, its main purpose is to support State policies outlawing such devices as slot machines. However, it also provides an exemption for such transportation into a State where the devices in question are legal.<sup>4</sup>

Throughout the 1950's, the main Federal efforts in the gambling field were those of the Internal Revenue Service under the wagering excise and occupational stamp tax statutes, 26 U.S.C. 4401 and 4411. Until the next decade, the Federal Government's only substantive jurisdiction in the field was the Johnson Act.

The total number of cases brought under this statute during the 1950's is not available. There is general agreement, however, that the Johnson Act was successful in eliminating interstate transportation of coin-operated gaming devices. The Kefauver Committee found that slot

machines were readily available throughout the various States; the Commission, through its own research and by reviewing other reports on illegal gambling, has found little evidence that this is still true.<sup>5</sup> (15 U.S.C. 1175, which deals with regulation of gambling in Federal enclaves such as U.S. territories and military installations, is discussed more fully later in this chapter.)

**18 U.S.C. 1084; 18 U.S.C. 1952–1953.** The Justice Department became an active participant in antigambling enforcement during the 1960's. The Kennedy administration believed illegal gambling was an extremely important target for Federal legislation. Various legislative and executive studies showing that illegal gambling provided a substantial source of revenue for organized crime helped insure the passage of three statutes prohibiting gambling activity.<sup>6</sup> These statutes were enacted for the purpose of attacking large gambling syndicates that use interstate facilities.<sup>7</sup>

This legislation, when combined with investigative methods available only recently to Federal authorities, enabled the Federal Government to deal with large-scale interstate gambling operations—which the States and local governments, because of jurisdictional limitations, were unable to do.

18 U.S.C. 1084 prohibits the use of communications facilities to transmit wagering information or bets in interstate commerce.<sup>8</sup> The act was not intended to be applied to the placing of social wagers over the telephone; its official purpose was to:

... assist the various states ... in the enforcement of their [gambling] laws ... and to aid in the suppression of *organized gambling activities* by prohibiting the use of wire communication facilities ... for the transmission of bets or wagers and gambling information in interstate and foreign commerce.<sup>9</sup> [Emphasis added.]

An exception to this prohibition permits interstate

transmission of the proscribed information for purposes of news reporting or for wagering purposes between two States where such wagering is legal.<sup>10</sup>

18 U.S.C. 1953 extended existing prohibitions against interstate transportation of wagering paraphernalia.<sup>11</sup> (In the late 19th century, statutes banning the interstate transportation of lottery equipment had been enacted in response to the nefarious practices surrounding lotteries at that time.)<sup>12</sup>

The broadest antigambling provisions are contained in 18 U.S.C. 1952. This statute prohibits interstate travel or the use of interstate facilities to promote a gambling enterprise which is in violation of State or Federal law.<sup>13</sup> It contains no specific exemptions, but all legal gambling operations are excluded from its application.

In actual application, most of the indictments issued under 18 U.S.C. 1084, 1952, and 1953 involve the use of communications facilities on an interstate basis. The statutes have been used extensively against bookmaking operations doing an interstate layoff business. They were also used successfully to shut down the lavish, large-scale illegal casinos that were common in some cities during the 1940's and 1950's.<sup>14</sup>

Testimony received by the Commission from Federal law enforcement personnel indicates that these statutes have been successful in eliminating many operations controlled by organized crime and specializing in interstate layoff bookmaking. However, other testimony from these same officials indicates that efforts utilizing these statutes have not eliminated or even reduced the scope of illegal gambling: Bookmakers may have had to revamp their operations, but illegal bookmaking continues unabated, primarily on an intrastate basis.<sup>15</sup>

With respect to illegal casinos, the Commission has found no evidence that the situation revealed by the Kefauver Committee still exists. To a large extent, the fixed-site casinos that operated in open violation of the law in many cities have been eliminated.<sup>16</sup> Every city, however, is thought to harbor casinolike operations which differ from their defunct predecessors in that they operate covertly and utilize much less elaborate equipment. Where the earlier casinos operated such mechanized games as roulette, these new gambling dens offer card and dice games. Both types of operations have been characterized by operators' efforts to rig the outcome of the games.

Before the interstate gambling statutes were passed, when large interstate layoff bookmaking operations existed throughout the country, a single layoff operation would often service bookmaking establishments in a number of States. Similarly, some illegal casinos transacted their business across State lines. These operations were known to be under the control of organized crime.<sup>17</sup> The Commission agrees with Congress that organized crime represents a threat to the Nation and thus is properly the target of Federal legislation.

The effectiveness of Federal law enforcement agencies in combating interstate gambling syndicates has clearly exceeded that of State or local efforts aimed at the same operations. The statutes under discussion—primarily 18 U.S.C. 1952—were appropriately used in eliminating the

regional layoff centers that were an important source of organized crime's control over bookmaking in the 1950's. The resources available to the Federal Government—such as the wiretap provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, immunity capability, and special grand juries<sup>18</sup>—have made Federal investigative efforts more effective than the States' in gambling cases, particularly when coupled with the organizational and jurisdictional capabilities needed for interstate surveillances.

These statutes have worked most successfully against the open types of gambling, which utilized highly visible equipment or stationary locations. Gambling ships and opulent casinos, once eliminated, were too costly to be duplicated. Similarly, the demise of the wirerooms can be attributed to the efforts of Federal law enforcement authorities through the utilization of the interstate statutes.<sup>19</sup> The major effect of this enforcement effort has been to substantially eliminate all but the two most prevalent forms of illegal gambling—numbers and bookmaking.<sup>20</sup>

The prohibitions contained in these statutes are also useful in preventing a State that permits legal gambling from interfering with the gambling policies of another State which does not. Thus, a legal bookmaker in Nevada is prohibited from laying off his bets to bookmakers in California, where this type of gambling is illegal. The Commission finds this to be consistent with the national policy on gambling, and believes that States that choose to prohibit gambling within their boundaries are well served by these Federal statutes.

**Because it is a matter of unqualified national concern that a State permitting gambling not impose its standards upon a sister State with differing standards, the Commission recommends that legislation prohibiting interstate gambling or gambling-related activities be retained. However, the Commission feels that there is duplication in the existing statutes that could best be eliminated by drafting a new statute covering the necessary elements of interstate prohibition. This statute would not in any way erode Federal authority over interstate gambling offenses, but would eliminate the overlap that presently exists.<sup>21</sup>**

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## Statutes Prohibiting Intrastate Gambling Activity and Related Bribery

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**18 U.S.C. 1955.** Federal jurisdiction over gambling via the commerce clause was significantly expanded with the passage of the Organized Crime Control Act of 1970.<sup>22</sup> Federal involvement had previously been predicated on a specific showing that interstate commerce was being used by the illegal gambling business; under 18 U.S.C. 1955, a part of the act, Federal jurisdiction was predicated on a congressional finding that illegal gambling businesses of a certain size have a deleterious effect on interstate commerce.<sup>23</sup> (For purposes of Section 1955, an illegal gambling business is defined as one which involves five or more persons in the conduct, financing, directing,

managing, or ownership of a gambling business doing a gross volume of \$2,000 per day or which operates continually over a 30-day period, and which is in violation of the law of the State where it occurs.)<sup>24</sup>

The chief justification for Federal jurisdiction was the additional congressional finding that syndicated gambling forms the largest single source of revenue for organized crime and helps to finance its other activities.<sup>25</sup> This statute, aggressively employed since its passage, has spearheaded recent Federal efforts against illegal gambling. As of June 30, 1975, 3,977 defendants had been indicted under the law. This compares with a total of approximately 2,000 defendants indicted under all other Federal gambling statutes during the same period.<sup>26</sup>

Utilization of the statute reached its peak in 1972, when 1,532 defendants were indicted under 18 U.S.C. 1955, compared with 366 defendants indicted for other Federal gambling offenses. While the number of Federal gambling defendants as a whole has declined substantially in the past 2 years (673 defendants in fiscal year 1975), 18 U.S.C. 1955 still accounted for more than 70 percent of the total.<sup>27</sup>

The Justice Department has testified that it feels that sentencing under 18 U.S.C. 1955 has frequently been too lenient, particularly in cases with large numbers of defendants.<sup>28</sup> Figures provided to the Commission by the Administrative Office of the Courts indicate that sentencing under this statute has been significantly lighter than under the other major antigambling statutes: Only 20 percent of those convicted under 18 U.S.C. 1955 between 1970 and 1974 received prison sentences, compared with at least 29 percent under each of the others. The average length of incarceration has also been somewhat lower.<sup>29</sup>

It should be noted, however, that sentencing under 18 U.S.C. 1955 appears to be harsher than that received by persons convicted under the wagering excise tax and wagering occupational stamp statutes before the *Marchetti-Grosso* decisions were handed down in 1968. Using a sample of cases provided by the Internal Revenue Service, the Commission found a lower percentage of prison sentences and a lower average length of incarceration under statutes 26 U.S.C. 4401 and 4411.<sup>30</sup> The Justice Department testified that it proposed a statute similar to 18 U.S.C. 1955 immediately following the *Marchetti-Grosso* decisions in order to maintain the Federal presence against major illegal gambling operations, regardless of whether such operations were involved in interstate transactions.<sup>31</sup>

It is often difficult to apply Section 1955 to bookmaking operations, which may involve only two or three people, because of the statutory requirement that five or more persons be involved in the operation of the business. Numbers operations more readily meet this requirement, but may not take in enough revenue for the statute to apply.

As stated previously, the Commission favors Federal legislation aimed at organized crime. Inasmuch as organized crime tends to benefit from large illegal intrastate gambling businesses, a Federal statute prohibiting such business is appropriate. However, some witnesses before the Commission have expressed concern

that prosecutions brought under 18 U.S.C. 1955, although meeting its statutory requirements, do not reflect Congress' specific desire to confront organized crime through the statute.<sup>32</sup> A number of Section 1955 indictments clearly have been directed against gambling businesses that are not, in fact, organized-crime-controlled operations.<sup>33</sup> The Commission does not question that some gambling operations that meet the statutory requirements of Section 1955 are either directly controlled by organized crime or provide revenue to it, but it finds that there are illegal operations not so connected that are still subject to prosecution under the statute. It is therefore necessary that the Department of Justice be selective in choosing cases to be prosecuted under this statute.

This Commission believes that modification of certain elements of this statute would serve to insure selective application. For example, an increase in the minimum required volume of business from \$2,000 to \$10,000 a day is more likely to result in application of the statute to operations thought to be connected with organized crime. Another element subject to modification is the requirement of five or more persons, which, as discussed earlier, is unduly restrictive when dealing with bookmaking operations. Relaxation of this requirement to three or more persons would permit prosecution of high-volume book-making operations that are currently immune from prosecution. A further modification might well be the inclusion of a definition of the verb "conduct" to preclude conclusively from indictment a person whose role in the illegal gambling business is merely that of a player.

The Commission seriously considered advocating repeal of this statute on grounds that it constituted Federal involvement in an area of local jurisdiction. However, the situation that prompted the statute originally—that is, the inability of State and local authorities to contain the illegal gambling problem because of lack of jurisdiction, resources, and manpower—has not changed. Therefore, **the Commission has reluctantly concluded that the Federal Government should retain its enforcement jurisdiction over specified areas of intrastate gambling. However, the Commission recommends that the elements of the offense be modified pursuant to the above discussion.**<sup>34</sup>

**18 U.S.C. 1511.** 18 U.S.C. 1511, also a part of the Organized Crime Control Act, prohibits conspiracy to obstruct law enforcement in order to facilitate an illegal gambling business if one of the coconspirators is an elected or appointed official of a political subdivision.<sup>35</sup> In the Senate Judiciary Committee report on the passage of 18 U.S.C. 1511, great emphasis was placed on the theory that gambling enterprises of the type defined in section 1955 could not continue to function without the assistance of corrupt law enforcement officials. The pervasiveness of that corruption was deemed to be a matter of national concern.<sup>36</sup>

The Commission did not receive enough information to conduct an analysis of the utilization of this statute. Section 1511 has seldom been employed, but there is no reason at present to doubt its usefulness as a possible deterrent to illegal gambling. In this instance, the Commission believes that Federal legislation aimed at eliminating corruption

fostered by illegal gambling activities is appropriate.

Historically, there have been instances of entire political systems being corrupted by organized crime, making State and local law enforcement agencies incapable of effective prosecution.<sup>37</sup> However, corruption of public officials is an important part of organized crime's method of operation in other areas of illegal activity too.

The Commission is aware that, in a number of investigations developed under this statute, no prosecutions were obtained because of the statutory requirement that two or more persons must be involved in the bribery attempt. In these situations, the public official

who was offered the bribe feigned cooperation with the briber, but no violation of Federal law could exist because, in effect, only one person was involved in the bribe.

**The Commission recommends that this statute be expanded to cover bribery relating to other illegal activities in the same manner as presently applies to the offense of gambling.**

**The Commission further recommends that appropriate language be added to the statute to allow for prosecutions in cases involving an attempt to bribe a public official to obstruct State or local law enforcement.<sup>38</sup>**

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## TAX STATUTES

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Although Federal taxation of gambling activities takes various forms (e.g., income tax on gambling winnings, individual and corporate income taxes on gambling business income, excise tax on gross wagers received by an individual in the business of accepting wagers, occupational stamp tax applicable to each person employed in the business of accepting wagers), all existing tax laws were passed primarily for the purpose of raising revenue and only secondarily to attack illegal gambling. Ironically, they have been ineffective as revenue-producing measures, and have contributed substantially to the success of illegal gambling operations. Congress must view this situation realistically from the standpoint of the national policy of assisting the States in their revenue-raising and law enforcement procedures.

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### Income Taxation (26 U.S.C. 61)

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Section 61 of the Internal Revenue Code provides the basis for the taxation of all income from any source.<sup>39</sup> Judicial interpretations of this section have consistently ruled as taxable "any accretion to wealth . . . unless specifically exempt,"<sup>40</sup> thereby encompassing gambling winnings.

Section 165(d) of the Internal Revenue Code allows a specific deduction for gambling losses (from both legal and illegal sources) up to but not exceeding the extent of gambling winnings.<sup>41</sup>

Since most persons wager for entertainment and as a hobby, the added burden of income taxes on such chance or windfall gains tends to encourage those few bettors who do win to evade taxes on these gains. It is generally accepted that few bettors are net winners during a given year or, for that matter, during their gambling careers; most bettors sustain a net loss. Those who have a winning year, and properly declare their winnings, are not permitted to carry back or carry forward losses from previous or subsequent years as a deduction from other income. This encourages patronage of illegal games; the winner in an illegal game can ignore the doctrine of voluntary compliance because he knows that the illegal operator will not report the win to the IRS.

There appears to be almost no voluntary compliance with the reporting and payment requirements relating to the taxation of gambling winnings.<sup>42</sup> Under current regulations, offices accepting legal parimutuel wagers must file information returns for wins of more than \$600 involving bets and winnings with odds higher than 299 to 1.<sup>43</sup> Apart from the income reported under this provision—a very small fraction of total parimutuel winnings—the Internal Revenue Service is unable to distinguish reporting of gambling winnings on personal income tax returns because these winnings are reported as "Other Income," and no distinction for gambling winnings is required under this category. The Internal Revenue Service reports having no resources specifically devoted to enforcing this provision of the Internal Revenue Code. In materials provided to the Commission, the IRS stated that the present tax laws affecting gambling winnings are operating in "a highly unsatisfactory manner."<sup>44</sup>

In 1960, the IRS did direct special monitoring procedures toward filing of information returns by racetracks and the reporting of gambling income by racetrack patrons. These procedures were terminated two years later, after the IRS concluded that compliance by both racetracks and bettors was satisfactory. However, despite the adequacy of these reporting procedures for extraordinary wins at unusual odds, average gambling winnings from legal sources apparently go unreported, as do winnings from illegal bookmakers.<sup>45</sup> And although the reporting requirements for very large winnings may be adequate, the IRS has found methods prevalent through which actual payment of the tax can be avoided. Since losses can be used to offset winnings, winners can circumvent the law by picking up losing tickets or falsifying the recipient's true identity through a so-called "ten-percenter."<sup>46</sup>

It is apparent that the law requiring payment of taxes on gambling winnings will always suffer from a lack of voluntary compliance. The requirement that a player be able to prove both his winnings and his losses is not one that can be realistically met by the gambler, particularly with respect to casino gambling. Even in the case of racetracks, where each transaction produces a record, a requirement that each bet be assigned a unique bettor's number (which would potentially prevent a winner from simply picking up enough losing slips to cover his



winnings) is not one that can be reasonably imposed. As previously discussed, the current reporting requirement arbitrarily selects a group for special treatment.

While the Federal income tax provisions relating to gambling do not serve to protect the interests of one State from the gambling policy decisions of another, they do nevertheless involve other substantial State, as well as national, interests: It is apparent that taxes on legal gambling winnings serve to deter large bettors from using legal betting facilities when faced with a choice between legal and illegal games. Testimony before this Commission has made it clear that existing Federal tax policies make any meaningful competition between legal and similar illegal games impossible.<sup>47</sup> A State that sees legal gambling as a technique for depriving illegal operators of their market may choose to exempt legal winnings from their State income tax; however, that approach would be defeated by retention of the existing Federal tax provisions. The current tax policy is tantamount to an inducement to the regular or heavy bettor to participate in illegal games.

The Commission believes that by giving a competitive edge to illegal facilities (which may in turn contribute their revenue to organized crime or other criminal cartels) the current tax policy on gambling winnings condemns to failure the efforts of a State to construct a legal alternative. It might therefore be concluded that the tax policy contributes to the success of gambling operations run by criminal elements. Certainly this was not the intent of Congress.

The Commission is aware that its recommendation on Federal taxation of gambling participants is the most central and, consequently, the most controversial one it has been called upon to make. For this reason, its decision has not been reached easily or without great care. It is the sense of the Commission that Congress should do all within its power, consistent with the national policy, to insure freedom of competition between burgeoning legal gaming industries and existing illegal gambling operations. If this is to be done, a different and consistent treatment of Federal tax policy is essential. Taxation of legal gambling winnings is the most critical issue affecting the right of each State to compete in the gambling arena, and it is clear to the members of this Commission that the present policy has a totally negative effect.

The attention of the States must be drawn to the deterrent effect of this tax policy, whether the policy is motivated by revenue raising or law enforcement considerations. It is, obviously, also appropriate for the States to review their present policies to determine whether the advantages that are derived from legal gambling operations may be offset by the advantage given to the illegal gambling community by Federal tax policies.

It is true that, in this country, gambling has traditionally been viewed as an activity that has a negative impact upon society and one that should therefore be taxed.<sup>48</sup> Yet in many States it is now a subject of State entrepreneurship, run by the State, controlled by the State, and providing revenue to the State. In such instances, exclusion of winnings from Federal income taxation should not be

considered a promotion of gambling, but, rather, an acceptance and encouragement of State policy predicated upon a mandate of the people of that State, as well as an anticrime measure of assistance to law enforcement. It is quite possible that Congress might want to distinguish, for tax purposes, between gambling businesses conducted by a State and those legalized by a State and operated by private enterprise. While this would not go far enough in terms of allowing free competition between legal and illegal gambling industries, it is certainly a position far preferable to that presently in effect. The overriding concern of the Commission in this area is the prevention of Federal interference in the domain of State production of revenue. To the extent that the legal gambling industries provide revenue to the States, the existing Federal tax policy is in contravention of the national policy which is being recommended by this Commission. The recommended policy is to leave to the States the determinative jurisdiction over the legalization of gambling. To this end, **the Commission recommends that winnings derived from legal gambling entities be excluded from gross income, with the affirmative burden being placed upon the taxpayer to declare the income and prove the legality of the source.** (It is part of the Commission's recommendation that, in order to receive the benefit of the exclusion, an individual would be required to make on his or her income tax return an affirmative representation of having received winnings from a legal, identified source. The IRS would formulate the appropriate reporting requirements and design a suitable form which would set forth verifiable information establishing the validity of the representation.)

This recommendation is not to be construed as applying to the professional gambler: If a person's trade or business or his primary source of income is gambling, a statutory distinction must be provided to deny the exclusion. This distinction would also apply to operators of private gambling enterprises, whether they are individual or corporate entrepreneurs. This recommendation should not be viewed as in any way favorable to those who engage in illegal gambling. The affirmative burden of proof as to the legality of the source is meant as a safeguard against this possibility; the applicable provisions of fraud and falsification of returns would be available against those who provide improper documentation,<sup>49</sup> and these violations are more readily proved than is an understatement of income by an indirect method of proof.

The Commission recognizes the potential legal and practical difficulties that could arise from the immediate application of this tax policy to all legal games. Consequently, **the Commission recommends that implementation of this policy begin with its application to State operated gambling enterprises;** should this experience show justification for continuation of the policy, it could then be made applicable to other legal gambling industries.

An issue related to taxation of winnings is the withholding of income in anticipation of potential taxes. Such measures are contained in 26 U.S.C. 1441(a), requiring

the withholding of 30 percent of all income earned by nonresident aliens,<sup>50</sup> including gambling winnings.<sup>51</sup> That the IRS favored expansion of this concept to other categories of gambling winnings, applicable to U.S. citizens, is evidenced by its support of the withholding provisions of the Tax Reform Act of 1976.<sup>52</sup>

This new act—H.R. 10612—provides for withholding of 20 percent of all “proceeds of more than \$1,000 from a wagering transaction, if the amount of such proceeds is at least 300 times the amount wagered.” The bill raises the withholding limit to \$5,000 or more won in a State lottery, removes the 300-to-1 odds requirement from “sweepstakes, wagering pools, and other lotteries,” and excludes bingo, keno, and slot machines from its provisions. Casino games, by omission, are exempt as well.

Congressional interest in this withholding measure is understandable, since, in testimony before the Senate Finance Committee, officials of IRS estimated initially that such a measure would generate \$500 million in revenue to the Government; the following day that figure was reduced to \$160 million. There is no evidence to support either estimate.

The Commission believes that the expansion of the withholding concept as it applies to parimutuel wagering will not raise additional revenues to the Government. The requirement that information returns be filed applies only to parimutuel wagers for which the odds against winning exceeded 300 to 1. The new withholding provision makes no such distinction and appears to require withholding of 20 percent of all winning parimutuel wagers of \$1,000 or more. The administrative burden to the operator of the legal industry to collect these funds is only one immediate concern, however; the likely impact of the requirement driving previous legal participants to illegal games is of greater concern, unless, of course, one is prepared to suggest that Congress specifically intended to increase the competitive advantage the illegal games presently maintain over their legal counterpart. Indeed, no factual basis has been provided to establish the validity of the estimate from IRS that \$110 million will be realized by withholding 20 percent of all winning wagers exceeding \$1,000 from parimutuel betting. Without such a factual justification, it would only temporarily be in the Government's possession, since losses in any given year will undoubtedly exceed winnings, entitling the return of these proceeds to a taxpayer.

The application of the withholding provision to State lottery prizes over \$5,000 is even more questionable. A study conducted by IRS clearly established that all State lotteries properly filed information returns reporting winners of over \$600 and that 85 percent of winners voluntarily reported and paid their taxes on such winnings. If these data from IRS are accepted, it is hard to envision any need for additional measures of collection, and it engenders skepticism about the claim of \$500 million in additional revenues that are supposed to accrue from such a measure.

The Commission has reviewed this legislation and its likely impact on both legal gambling industries and individual participants in games of chance. It has examined

the possibility that substantial administrative burdens might be imposed upon legal gambling businesses, and that illegal forms of gambling might become more attractive to the players, thereby reducing revenues to the States and increasing illegal gambling. It has questioned whether there is a real correlation between winnings on a given day and the overall tax liability of the participant, since gambling losses are deductible from winnings over the course of a year and most players lose on balance. It has sought to determine the amount of revenues that would ultimately be raised by such a measure, and whether such revenues would warrant the administrative expenses and social and economic consequences involved. Using these criteria, the Commission seriously questions whether the new withholding measure would serve to further any identifiable national interest; indeed, it would appear that such withholding interferes with the policies of numerous State governments.

Additionally, the exclusion of games such as keno, bingo, slot machines, and all casino gambling from any withholding requirement is, at best, arbitrary. At worst, it appears that Congress has once again formulated a clearly discriminatory practice against selected gambling industries based on what is apparently a very inexact estimate of the anticipated revenue. In an even more bizarre occurrence, Congress has inadvertently required withholding on any parimutuel winnings in excess of \$1,000. The Commission can only hope that Congress will correct this mistake in its next session. Clearly, if the existing policy of taxing gambling winnings from a legal State entity is questionable, then the extension of that policy by withholding on other selected legal wagering entities is insupportable.

Consequently, the Commission concludes that the withholding measure will increase the advantage to illegal operators, generate minimal revenues to the Government, and unnecessarily increase the administrative burden to the legal gambling businesses. **The Commission recommends that Congress reexamine the probable impact of section 1207(d) of the Tax Reform Act of 1976. If, upon reexamination, Congress finds the proposed withholding tax to be destructive of existing legal gambling industries, the Commission recommends that these withholding provisions be repealed.**

A review of the Canadian approach to windfall gambling winnings was conducted at the Commission's request.<sup>53</sup> Canadian tax officials at the national and field levels were interviewed to obtain their views and experiences. Canadian law enforcement officials were also consulted to determine what effect, if any, Canadian tax policies on gambling winnings have on law enforcement efforts as they relate to illegal gambling.

The Canadian officials were unanimous in support of the exclusion of windfall or chance gains from taxation. They stated that this exclusion from income has not caused any adverse impact on tax revenues and, further, that it has not proven to be a problem in tax fraud cases in which the net worth method of proof was employed.

The Commission recognizes that the present use of form 1099 at racetracks to report large prizes is subject to

circumvention by unscrupulous players; however, should the regulation requiring form 1099 at racetracks not be repealed, the Commission believes that a simple modification making it a criminal violation to wrongfully receive funds reported on such forms would eradicate the problem of false reporting, and would be preferable to the imposition of withholding on winnings.

In the past, Congress has consistently encouraged State revenue-raising endeavors by providing them with favorable tax treatment. For example, a person who, in effect, lends money to a State through the purchase of a bond has the benefit of receiving tax-free interest.<sup>54</sup> Likewise, the imposition of certain State taxes—such as income, sales, and gasoline taxes—is partially offset by the allowance of deduction of these payments on Federal income tax returns.<sup>55</sup> **The Commission recommends that Congress—to be consistent—should provide equal tax treatment for legal gambling entities that are operated by a State.** This could be done by allowing bettors to deduct from their Federal income tax return that portion of the wager which reverts directly to the State for use in educational systems, aid to the elderly, or in the general fund for State services. For example, if 45 cents of a \$1.00 lottery ticket purchase is allocated to the State, then that 45-cent portion could be taken as a deduction, using the total amount wagered (\$1.00) only for purposes of the amount wagered in computation of net gambling income. This would provide a nondiscriminatory application of these incentive policies and would assist the States in becoming competitive with the illegal games. Congress might wish to begin by allowing this deduction for wagers placed with gambling industries operated by a State. Then, if experience dictates its feasibility, the policy could be extended to include legal gambling operations subject to State licensing or State regulatory procedures.

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## **Wagering Excise Tax (26 U.S.C. 4401)<sup>56</sup> and Wagering Occupational Stamp Tax (26 U.S.C. 4411)<sup>57</sup>**

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These taxes were originally promoted in 1951 as revenue-producing measures representing an estimated annual gain of \$400 million.<sup>58</sup> An additional goal advocated by proponents of the tax bills was the curbing of illegal wagering. At that time, the Kefauver Senate hearings were calling public attention to illegal gambling and stimulating interest in legislation aimed at combating racketeering through an attack on illegal gambling profits.<sup>59</sup>

The excise tax was originally set at 10 percent of gross wagers received by an individual in the business of accepting wagers; the occupational stamp was set at \$50, applicable to each person employed in the business of accepting wagers.<sup>60</sup> On December 1, 1974, these were changed to 2 percent and \$500, respectively, in an effort to enable legal bookmakers who pay the taxes to compete more effectively with their illegal counterparts.<sup>61</sup> This change also indicated a recognition that legal gambling industries, which have been on the increase in recent years,

should not be subject to discriminatory tax treatment: The wagering taxes do not apply to parimutuel wagering, coin-operated devices, State lotteries that base winnings on horserace results, or casino games; they apply only to sports and horse bookmaking and numbers games.

The Internal Revenue Service opposed passage of these laws originally on the grounds that the taxes were unenforceable and nonproductive and, further, that the IRS' failure to enforce them would in turn breed contempt for other provisions of the tax laws.<sup>62</sup>

Because the IRS was not granted additional appropriations for manpower expenditures, its apprehensions about the legislation became a reality: The revenue derived averaged only \$7 million per year, and voluntary compliance was at best minimal.

Nevertheless, the statutes provided the Internal Revenue Service with the authority by which to attack illegal gambling and organized crime. Throughout the 1950's and early 1960's, these statutes were the only means by which the Federal Government could obtain jurisdiction in gambling cases, and the presence of the IRS often provided intelligence information used in other cases.

Following the passage in 1961 of statutes prohibiting interstate gambling activity (18 U.S.C. 1084, 1952, and 1953), the wagering tax statutes continued to provide Federal law enforcement agencies with their sole source of jurisdiction over gambling operations of an intrastate or local nature. Then, on January 29, 1968, the U.S. Supreme Court handed down its decisions in *United States v. Marchetti* and *United States v. Grosso*.<sup>63</sup> These decisions held that the fifth amendment provided a complete defense for failure to comply with the wagering tax laws. Predictably, they led to an almost complete discontinuation of criminal investigations under the wagering tax statutes, except in cases involving legal wagering operations and persons who filed false statements. When a criminal case is made, records seized in the raid can be utilized as the basis for a civil assessment, which is then levied against any monies or valuable property seized. Although the total amount of the assessment is rarely, if ever, collected by the IRS, the impact of civil actions on the illegal wagering operations has some merit.

In 1974, legislative changes in the wagering tax schedules added restrictions on the potential use of information required by the tax provisions, as well as an immunity provision.<sup>64</sup> The legislation provided criminal sanctions for disclosure of documents to any person except in connection with the actual administration or enforcement of the tax laws. It was the intent of Congress thereby to override any existing ambiguities resulting from judicial interpretations, and to correct the problem inherent in pre-Marchetti legislation by eliminating the self-incriminatory aspects of the statute.<sup>65</sup>

Enforcement of these statutes was delegated by the Department of the Treasury to its Bureau of Alcohol, Tobacco and Firearms (ATF), rather than to the Internal Revenue Service. No additional appropriation has been provided to ATF for this new enforcement responsibility.<sup>66</sup>

It is clear that the wagering taxes have not diminished

the volume of illegal gambling. Congress has not given enforcement agencies the additional manpower needed to enforce these statutes, thus weakening their effect. Further, it would appear that State-sanctioned forms of gambling are the most adversely affected. Imposition of the 2-percent excise tax, for example, impairs the ability of legal bookmakers in Nevada to offer the same odds as illegal bookmakers. If a legal bookmaker passes the tax on to his customer, he will most likely drive the customer to an illegal operation; yet if he absorbs the tax himself, he may very well drive himself out of business. The Commission believes that these taxes will prove seriously detrimental to States that legalize additional forms of gambling.

The Commission, in keeping with its national policy, believes that the States should be permitted individually to levy whatever taxes they consider proper on legal gambling concerns. If the States demonstrate the ability to do this, it should preclude the imposition of Federal taxation.

**The Commission therefore recommends repeal of both the wagering excise and occupational stamp taxes.**

**An alternative recommendation is the retention of the taxes, with an exemption provided for gambling industries operated by a State.** As stated in the preceding section on income taxation of gambling winnings, the Commission is opposed to Federal interference with State revenue-raising programs; exemption of State-operated gambling businesses from these wagering taxes is thus deemed critical to their continued success.

If this recommendation—rather than total repeal—is adopted, then two further recommendations become necessary. The first is that **additional enforcement appropriations should be provided to ATF so that it will have the necessary manpower and other resources available to investigate alleged violations adequately.** The second concerns the occupational stamp tax. In the present law, the stamp is issued to each employee for a particular job; if he leaves one wagering job and goes to another with a different establishment, he must acquire another stamp. This places an unreasonable burden on the employee and, in many instances, on establishments that pay for the

stamps for their employees. The recommendation, therefore, is that **if there is to be a continuation of the occupational stamp, it should be issued to the establishment, under strict reporting requirements as to their individual employees, thereby eliminating the necessity of transferability with each employment change.**

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## **Occupational Tax on Coin-Operated Gaming Devices (26 U.S.C. 4411)<sup>67</sup>**

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This statute was passed in 1941 for the primary purpose of raising revenues. The statute imposes a \$250 tax per machine on anyone who maintains a coin-operated gambling device for use on his premises. By definition, devices qualifying for this tax are those which deliver cash or merchandise at a retail value of more than 5 cents, with such delivery predicated upon the element of chance.

This tax has produced more than \$307 million since 1955; prosecutions for failure to pay have resulted in 92 arrests and the seizure of more than \$1 million in property and currency.<sup>68</sup> The revenues to the Federal Government realized from this tax, however, have dropped substantially since 1971, when Congress enacted legislation providing a credit against Federal taxation of up to 80 percent for similar taxes paid to the State, if the gambling devices are legal.<sup>69</sup>

This statute does nothing to protect one State from the gambling policies of another. Nor is any national interest served by this tax. There is Federal criminal enforcement authority over gambling devices via the Johnson Act (15 U.S.C. 1171-1177), thereby negating any need for Federal regulations through taxation, particularly when the bulk of the taxes collected are returned to the State. Repeal of this tax entirely would leave the question up to those States permitting that type of activity and satisfies the requirements of the national policy of gambling. **Therefore, the Commission recommends repeal of the occupational tax on coin-operated gaming devices.**

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## **LOTTERY STATUTES**

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### **Statutes Restricting Use of Postal, Broadcasting, and Interstate Commerce Facilities by Lotteries (18 U.S.C. 1301-1304, 1307, and 1953 [(b)(4)]; 39 U.S.C. 3005)<sup>70</sup>**

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Federal statutes restricting the ability of lotteries to use postal, broadcasting, and interstate commerce facilities had their beginnings in the 19th century, when lotteries were prohibited by all the States. The intent of Congress clearly was to protect the public by denying lotteries—which were deemed corrupt, fraudulent, and degenerative—the facilities of interstate commerce. The mailing,

broadcasting, and interstate transportation of lottery-related materials were prohibited by the Federal Government until 1975. At that time, Congress acted to exempt legal State lotteries from these restrictions after 12 State-run lotteries had been put into operation. It was the desire of Congress to eliminate any Federal interference with this form of revenue-raising by the States, while at the same time protecting the interests of States that prohibited lotteries. Accordingly, State games were limited to intrastate mailings, and lottery broadcasts were restricted to licensees within the lottery State, or in adjacent States that also permitted lotteries.<sup>71</sup>

After the passage in 1890 of the final segment of the original antilottery legislation, the Postal Inspection Service enforced the statutes vigorously, and the Postmaster

General was able to report in 1892, that the use of the mails by lotteries had practically ceased. In more recent years, there has been a gradual decrease in the number of postal investigations of illegal lotteries, amounting to less than 2 percent of the total conducted by the Postal Inspection Service.<sup>72</sup> Similarly, 18 U.S.C. 1304 has been used by the FCC to bring a small number of administrative actions against licensees who broadcast information about commercial lotteries.<sup>73</sup>

Since the enactment of 18 U.S.C. 1307 in 1974, State lotteries have been able to make use of radio and television for advertisements and broadcasts of drawings. The mails have been used by all the lottery States; while some have restricted their mailings to addresses within their borders, however, others have mailed information and prizes across State lines in response to unsolicited requests to participate. New Hampshire, for example, accepts requests to participate in its sweepstakes from every State in the Union, in defiance of the Justice Department, which has brought a civil action to enjoin this practice.<sup>74</sup>

The facilities of interstate commerce remain closed to lotteries which are not operated by State governments. Further, the Postal Service has construed 18 U.S.C. 1302 to apply to nonlottery activities such as the mailing of gambling-related brochures by legal Nevada casinos.<sup>75</sup>

Congress has chosen to permit State lotteries to utilize broadcasting and postal facilities to prevent Federal interference with a form of revenue raising duly authorized by 13 States. At the same time, the intent of Congress to protect the interests of States that wish to prohibit lotteries has been clearly expressed<sup>76</sup> and is in accordance with the philosophy of this Commission. However, by limiting lottery-related mailings to addresses within the borders of a State authorizing the game, the Federal Government prevents the distribution of lottery materials to States in which their use may be legal. Lottery tickets and advertisements should not be barred from the facilities of interstate commerce when they are legal both in the State of origin and in the State of destination. Broadcasts of information about legal lotteries should be permitted by licensees in any State where the purchase of the tickets that are the subject of the broadcast is authorized by law.

This can be accomplished without sacrificing the interests of the nonlottery States. Under such a plan, if a State had a statute prohibiting the sale of lottery tickets, the full weight of the Federal regulatory and law enforcement machinery could be utilized in violations involving interstate commerce. As a practical matter, this policy would effect no change in the present practices of the 37 nonlottery States, since their statutory and constitutional prohibitions against lotteries would be sufficient to invoke a Federal presence where interstate traffic is involved.

The Commission does not believe that the policy described above should be limited to lotteries operated by State governments only. If lotteries that are run for commercial, recreational, or charitable purposes are permitted within a State, there is no reason for the Federal Government to treat them differently from lotteries

operated by a State. As long as the interests of abstaining States are protected, there is no justification for Federal restriction of such activities when they are condoned in the State where they occur. In addition, the Commission does not believe that lotteries that base their results on sporting events should be treated differently by the Federal Government from lotteries that rely on other means of determining the outcome. As long as the method of choosing winners is authorized by the State in which the game occurs, the Federal Government should treat all games alike. Indeed, the Commission believes that Federal policy should be uniformly applied to all types of gambling construed to be covered by 18 U.S.C. 1302, not merely to lotteries. For example, since the Postal Service has construed 18 U.S.C. 1302 to apply to casinos, casinos should be included within the scope of its exemptions in section 1307 as well.

In addition, the Commission believes that Federal law should not prohibit the mailing, interstate carriage, or broadcasting of advertisements concerning gambling activity that takes place within the confines of a State where it is legal. The operators of gambling businesses should be able to publish information about participation in their games, provided that it is legal to participate in those games while the player is physically present in the State; the Federal Government has no proper role in preventing the dissemination of such information. An exception to this policy would arise when a State had acted to regulate or prohibit such advertisements; then the Federal Government should not permit the facilities of interstate commerce to be used to frustrate such a policy.

18 U.S.C. 1953(b)(4), which permits the transportation into a State of materials used in the operation of a legal State lottery, can be read as permitting lottery tickets to be sent out of a lottery State, as long as they were first "used or designed for use" in that State's lottery.<sup>77</sup> The Commission wishes to prevent this unintended consequence, while insuring that individuals who carry lottery tickets across State lines solely for their private use are not subjected to Federal prosecution. The statute should be made applicable to private lotteries as well.

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## **Statutes Governing Financial Institutions (12 U.S.C. 25[a], 339, 1829[a], and 1730[c])<sup>78</sup>**

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These statutes were enacted in 1967 to prohibit all federally controlled or federally insured financial institutions from participating in lottery-related activities, so as to preserve their reputation for safety and solvency.

Although banks and lending institutions may not engage in the sale, redemption, or advertising of lottery tickets, they are permitted to perform "lawful banking services" for State-operated lotteries. This has been interpreted by the supervising agencies to include the storage and distribution of lottery tickets and receipts.<sup>79</sup>

The Commission does not challenge the practices of the supervising agencies pursuant to the banking statutes. Nor does it question the decision of Congress that the

institutions specified in these statutes should be free from active participation in gambling operations. The regulation of federally insured and controlled financial institutions is clearly within the power of Congress. The Commission has

been presented with no evidence that this Federal policy has substantially interfered with the ability of the States to operate their lotteries. **The Commission recommends no change in these statutes.**

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## CIVIL REMEDIES

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There are several statutes—18 U.S.C. 1961-1968—providing for civil remedies to be used against gambling offenders. These provisions, enacted as part of the Organized Crime Control Act of 1970, are directed against racketeer-influenced and corrupt organizations.<sup>80</sup> These sections are collectively referred to as the RICO statutes. 18 U.S.C. 1961 defines terms and 18 U.S.C. 1962 provides criminal sanctions for certain activities.<sup>81</sup>

The RICO statutes allow the Government to seek criminal penalties<sup>82</sup> and/or civil remedies<sup>83</sup> against persons who commit two separate acts of “racketeering activity.” (Racketeering activity encompasses many disparate unlawful acts in addition to gambling.) To date, prosecutions have generally involved charges of two or more types of crime, but could conceivably cover two separate types of gambling offenses.<sup>84</sup> Among the offenses chargeable under State law and punishable by imprisonment for more than 1 year are transmission of gambling information,<sup>85</sup> interstate transportation of wagering paraphernalia,<sup>86</sup> and prohibition of illegal gambling businesses.<sup>87</sup>

Although utilized on a very limited basis so far by the Department of Justice, the civil remedy provision—18 U.S.C. 1964—has been tested and found to be a strong weapon against racketeer-influenced gambling activities.<sup>88</sup> 18 U.S.C. 1964 gives U.S. District Courts jurisdiction to restrain violations of 18 U.S.C. 1962. Without limiting any other remedy, the section allows the courts to order individuals to divest themselves of their interest in enterprises involved in violation of RICO statutes; to impose reasonable restrictions on the future activities and investments of such individuals (including engaging in the same activity); and to order the dissolution or reorganization of any enterprises involved in racketeering activity.<sup>89</sup> These far-reaching remedies, while not punitive, sometimes constitute more pragmatic protection to the public from gambling racketeers than would criminal punishment.

The civil remedy allowed in 18 U.S.C. 1964 does not allow a penalty of incarceration, forfeiture, or fine, but does permit the Government to obtain from the court an injunction which prohibits the gambler from engaging further in any illegal gambling business.<sup>90</sup> It is not the present crime but the future violation of the court’s order that serves as a deterrent: Following entry of such an injunction, the defendant is under the power of the court for a substantial period of time. On a subsequent showing by the Government that he has engaged in an illegal gambling enterprise, the defendant may be held in contempt and fined and/or incarcerated. No new charges need be filed. After giving the defendant notice by issuing an order to show cause why the defendant should

not be held in contempt, the Government is obliged to show the court only that its order has been violated. This streamlined procedure allows rapid response to contemptuous violation of the court’s order.

Apart from using the injunction as a strong deterrent device, the civil remedy provides other advantages. Unlike criminal cases, which are initiated by the filing of an indictment after presentation of evidence and the voting of a true bill by the grand jury, a civil case is instituted by filing a complaint<sup>91</sup> and issuing a summons.<sup>92</sup> The complaint alleges the jurisdiction of the court, the identity of the parties, and the facts upon which relief can be granted.<sup>93</sup> Unlike an indictment, a complaint can be easily amended at any time, even after the trial has concluded.<sup>94</sup> The word “racketeer,” with its attendant connotations, can be used in the allegations.

The parties in a civil case, unlike those in a criminal case, can engage in extensive discovery by submitting written interrogatories, requiring documents to be produced, and taking depositions of the parties and other witnesses.<sup>95</sup> Such discovery is extremely beneficial in learning the nature of the illegal gambling business, the means by which it was operated, and the identity of those who participated in its operation. A defendant in a civil case, unlike criminal defendants, can be forced to testify and give information concerning conduct which may be illegal; however, a grant of immunity may have to be given to avoid infringement of the defendant’s privilege against self-incrimination.<sup>96</sup> Failure of a defendant to provide discovery when ordered to do so by the court can result in the imposition of sanctions by the court, including a fine and/or imprisonment.<sup>97</sup> Unlike contempt for failure to testify before a grand jury following the grant of immunity (which permits the defendant to be incarcerated for the life of the grand jury, usually 18 months), the recalcitrant defendant in a civil case can be incarcerated for an unlimited period of time since he can purge himself from contempt by testifying when he so chooses.

Use of discovery carries significance beyond the fashioning of relief against the defendant himself. Because illegal gambling businesses must lay off money to others, employ runners, utilize oddsmakers, and perform other activities with persons outside of the core group in which they operate, use of discovery makes it possible to reveal other gambling groups. Once again, the liberality in pleadings in civil cases permits the filing of a new case or the amendment of the old case to include new parties and obtain relief against them.

Of utmost significance here is the lowering of the burden of proof that the Government must meet in order to obtain relief. In a criminal case, the Government must prove the defendant guilty beyond a reasonable doubt. In



a civil case, the Government need only prove by a preponderance of the evidence that the defendant is likely in the future to engage in conduct that violates the law—in this case the RICO statutes. While past illegal conduct by the defendant would most commonly be used to demonstrate the likelihood of future violations, such evidence is not absolutely necessary. It is possible to grant immunity from criminal prosecution to one witness and, by using discovery techniques, develop information against other defendants which is sufficient to obtain civil relief against all of them.

Finally, the injunctive relief restraining the defendants from participating in future gambling activities need not apply only to illegal conduct. The injunction can prohibit the performance of an otherwise lawful act.<sup>98</sup> For example, an individual who is restrained from accepting horse wagers can be prohibited from visiting a racetrack in a State where parimutuel gambling is legal. Also, a defendant can be forced to divest himself of property that he utilizes

to carry out his illegal gambling business—for example, a legitimate business used as a cover for the illegal operation. It may also be possible to require defendants to submit reports disclosing their employment and source of income to make it more difficult for them secretly to reenter an illegal gambling operation. Because the relief sought is of an equitable nature, the court can fashion any relief that is appropriate to carry out its order, thereby providing great flexibility in controlling the defendant's participation in illegal gambling operations in the future.

The Commission finds the civil remedies provided in 18 U.S.C. 1964 to be cost-effective, thorough, and capable of great success in stemming illegal gambling in the United States. **The Commission recommends retention of these statutes, selective utilization of this remedy by the Federal Government against major gambling businesses connected with organized crime, and the adoption by the various State governments of civil relief statutes similar to 18 U.S.C. 1964.**<sup>99</sup>

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## FEDERAL ENCLAVES

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Through constitutional grants of power, the Federal Government is given jurisdiction over certain tracts of land that include Indian reservations, military installations, and territories and possessions. To the extent that these areas differ from States in the application of Federal laws relating to gambling, they warrant separate treatment.<sup>100</sup>

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### Indian Reservations

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The Indian tribes once were separate and sovereign nations within what is now the United States, but through conquests and subsequent treaties, tribal units were placed under Federal protection, within specified grants of land. These grants in land, or reservations, were deemed to be "distinct political communities" subjected, by the Constitution, to exclusive Federal jurisdiction. States were therefore preempted from enforcing their laws within the reservation's territorial boundaries.<sup>101</sup>

The Constitution delegates to the Federal Government the "power to regulate Commerce . . . with the Indian tribes."<sup>102</sup> The commerce clause, however, has not been found to be the sole basis for Federal police power over Indian reservations, as it is in the regulation of such offenses as gambling.<sup>103</sup> Additional police power in this instance stems from the Federal authority to regulate the territories, a power which is not dependent upon specific constitutional grant.<sup>104</sup> This Federal power supersedes any tribal ordinances that may be in conflict with it, thereby nullifying such ordinances.<sup>105</sup> Federal prohibitions do not, however, constitute the total regulatory body of laws by which Indian reservations are governed: The Assimilative Crimes Act permits the use of State statutes to cover offenses not covered by the Federal criminal code,<sup>106</sup> and tribal governments are permitted to regulate offenses committed among Indians on the reservation.

While the Federal Government has retained a guardianship role vis-a-vis the Indian population, it is under no obligation to continue this role. Congress is the sole arbiter of when and how the present Federal role is to be changed or terminated;<sup>107</sup> the Indians themselves are powerless to alter or suspend the existing relationship. In withdrawing Federal control, Congress can cause jurisdiction over the reservations to be delegated to the States, and, in fact, has taken steps in that direction by passage of Public Law 83-280.<sup>108</sup> This statute granted civil and criminal jurisdiction over reservations to the States; subsequent amendments included the requirement that tribal consent to a State's assumption of jurisdiction be given before such jurisdiction could apply. The statute contains specific language reiterating the principle that the respective State's criminal code would have the same weight on Indian territory as it has throughout the rest of the State. While this statute was passed with an eye toward eventual termination of Federal supervision in this area, it also made clear that such termination was to be effected gradually.<sup>109</sup>

Perhaps the most controversial issue arising from Public Law 83-280 concerns taxation. The statute itself contains explicit language prohibiting State taxation of Indian concerns.<sup>110</sup> Nevertheless, States have shown an understandable interest in taxing the Indians' economic activities in view of their increasing stature in the political and economic life of the State. State attempts to levy any such taxes have, to date, failed.<sup>111</sup>

Of the myriad of Federal statutes dealing with prohibition of gambling activities, only one specifically prohibits a single gambling activity on an Indian reservation; the legalization of all other games is dependent upon State law. This statute, part of the Johnson Act, states:

It will be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of Title 18 or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of Title 18.<sup>112</sup>

The Commission fails to see any reason why, as to this particular activity, Indian reservations should not receive treatment consistent with State law. It does not consider the nature of the offense to be such as to warrant its continuing to be singled out as an area of Federal jurisdiction while other types of gambling activity on the reservation are subject to applicable provisions of State law. The continuation of this policy is neither in the national interest, nor is it protective of one State's rights from infringement by a sister State. Consequently, **the Commission recommends repeal of 15 U.S.C. 1175.** To do so would then place all gambling activities under the control of applicable State law. **The Commission further recommends that legal gambling activity of any kind conducted on an Indian reservation pursuant to State law should be subject to the same rate of taxation as that same activity conducted elsewhere in the State.** That activity would presumably be subject to the same licensing and regulatory requirements whether conducted on or off a reservation. Therefore, the licensing privilege should be accompanied by the correlative duty of equal taxation.

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## Military Installations

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This subsection examines the application of gambling laws to military installations, which are broadly defined as any land area controlled or used in the pursuance of military activities. Because of the status of the specific land area, Congress has the authority to enact general municipal legislation applicable within that land area.<sup>113</sup> The method by which each tract of land within an installation is acquired, as well as the time of its acquisition, may affect the type of legislative authority available to the Federal Government.<sup>114</sup> Therefore, each tract must be treated individually; more often than not, military installations have been built up over a period of years in a series of increments acquired through different methods, thereby creating a complex jurisdictional pattern. However, there are three basic types of jurisdiction over military installations which may inure to the Federal Government:<sup>115</sup>

1. Exclusive Legislative Jurisdiction. Under this situation, the Federal Government has received all authority to legislate, with none left to the individual State.

2. Concurrent Legislative Jurisdiction. This limits Federal authority by virtue of the State's having reserved to itself the right to exercise, concurrently with the Federal Government, all or some of the same authority, insofar as such State authority is not inconsistent with Federal authority.

3. Proprietary Interest. Under this situation, the Federal Government has acquired some degree of ownership in

the land, but has not derived any legislative authority.

The fact that the Federal Government has legislative authority, either exclusive or concurrent, over a particular area, does not establish that it has actually passed applicable legislation, only that it has the authority to do so. As to the Federal statutes dealing with gambling, only 15 U.S.C. 1175, dealing with gambling devices, makes specific reference to military installations under exclusive and concurrent Federal jurisdiction.<sup>116</sup> In general, Title 18, which codifies Federal crimes, applies to military installations; the Assimilative Crimes Act, discussed supra, is utilized to provide jurisdiction over offenses not covered by Title 18. This act operates only when there is no applicable Federal statute, and cannot be utilized to enlarge upon or narrow the scope of the Federal offense.<sup>117</sup> Any State laws which contravene the Federal provisions are not applicable under the Assimilative Crimes Act. Therefore, with respect to gambling offenses, those games not expressly proscribed by Federal statute are governed by State law through an application of the Assimilative Crimes Act.<sup>118</sup> In addition, the operations of any games on a military installation that are legal within the particular State are subject to the rules and regulations promulgated by the particular branch of the service having jurisdiction; these rules also differ among the branches.<sup>119</sup>

As discussed in the section of this chapter dealing with Indian reservations, the Commission is of the opinion that specialized treatment of a Federal enclave with respect to gambling devices is not in keeping with the stated national policy toward gambling; therefore, **the Commission recommends that 15 U.S.C. 1175 be repealed.** The applicable State statutes should be the governing force, and those rules of a particular branch of service which conflict with the State statutes should also be repealed.

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## Territories and Possessions

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The Constitution establishes Congress' discretionary authority to impose Federal regulation on territories and other property belonging to the United States.<sup>120</sup> In this regard, Congress has made Federal gambling legislation applicable to Guam, the Virgin Islands, and American Samoa in the same manner that such legislation is applicable to the several States.<sup>121</sup> In two instances, however, Congress has delineated a special treatment in the area of gambling regulation: The provisions of the Johnson Act, discussed herein, while defining the Virgin Islands and Guam as "States" for purposes of the act, retain the specific proscription as to gambling devices as applying only to American Samoa,<sup>122</sup> and 18 U.S.C. 1301 specifies its prohibition against the transportation of lottery tickets to apply to the Canal Zone.<sup>123</sup> The Commission does not feel that these isolated instances of specialized treatment are in keeping with the stated national policy of permitting individual States to determine their own policy as to gambling legislation. The Commission does not feel that certain territories and possessions of the United States should be accorded unique treatment in the area of gambling legislation; there does not appear to be any



rationale for restricting the governments of Samoa and the Canal Zone, while permitting the local governments of other U.S. possessions and territories to conduct the same activity. As stated earlier, **the Commission recommends repeal of 15 U.S.C. 1175. It further recommends removal of the Canal Zone from the express provisions of 18 U.S.C. 1301.**

The Commonwealth of Puerto Rico retains a singular status by virtue of a contract arrangement which voluntarily associates the Commonwealth with the United States.<sup>124</sup> This contract provides that the Federal laws of the United States are applicable to Puerto Rico with two exceptions: The first provides that Federal legislation would not apply in instances where local conditions would make such application undesirable.<sup>125</sup> This, in part, explains the exclusion of Puerto Rico from the application of the Johnson Act, since the Commonwealth has an interest in revenues derived from the operation of its casinos and

the attendant attraction of tourism. The second exception provides an exemption for Puerto Rico from the internal revenue laws of the United States.<sup>126</sup> The result of this exemption is the freedom from Federal taxation of any profits realized from gambling activities in the Commonwealth of Puerto Rico. It must be emphasized that these provisions are applicable only through the contractual arrangement between the Commonwealth and the U.S. Government; possessions do not per se have the status of being recognized as individual entities for the purposes of taxation, and are therefore subject to the full panoply of Federal tax policies, as well as any local taxes that may apply.<sup>127</sup> **The Commission recommends the continuation of these policies with respect to gambling taxation, with the further recommendation that any possession which acquires the status of a Commonwealth in the future should be accorded treatment equal to that of the Commonwealth of Puerto Rico.**

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## MISCELLANEOUS GAMBLING STATUTES

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Historically, there have been other areas in which it was felt that antigambling proscriptions would be helpful, although these statutes have been utilized little, if at all, since their passage.

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### 8 U.S.C. 1101, 1182<sup>128</sup>

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These provisions of the immigration and naturalization laws indicate the intent to exclude from naturalization persons with a history of illegal gambling violations. As originally written, 8 U.S.C. 1182 was intended to exclude from entry into the United States aliens coming in to engage in "unlawful commercialized vice." Although the original bills contained no specific reference to gambling, a later attempt to clarify 8 U.S.C. 1182 led to addition of the specific language of 8 U.S.C. 1101. The definition of "good moral character" necessary for naturalization or relief from deportation contained particular language designed to exclude persons with a background of illegal gambling activity.

The Immigration and Naturalization Service (INS) does not maintain statistics on the number of applications for naturalization or for relief from deportation that have been denied because of provisions of 8 U.S.C. 1101 and 1182. The Commission is advised, however, that these statutes are in fact utilized.<sup>129</sup> In these instances, the INS relies upon investigative efforts of other agencies rather than conducting investigations of its own into illegal gambling activities.

Although the Commission has been unable to determine the manpower or cost factors attributable to administration of these statutes, it is nevertheless of the opinion that they should be retained. Immigration continues to be a matter of national concern, and exclusion of undesirable persons is unquestionably in the best interests of the country. **So long as the exclusion covers a specified list of illegal**

**activities, the Commission recommends retention of gambling activities within that list.**

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### 7 U.S.C. 2044<sup>130</sup>

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This statute, part of the Farm Labor Contractor Registration Act, permits suspension or refusal of a certificate of registration to a migrant farmworker crew leader convicted of a State or Federal law relating to gambling.

The intent of the entire Registration Act was to protect migrant workers from exploitation by irresponsible crew leaders. The provision relating to gambling convictions was predicated upon a finding that gambling was one of the several schemes through which unscrupulous crew leaders were able to take advantage of their workers.<sup>131</sup>

The Commission has been advised by the Department of Labor that applicants for certificates of registration are routinely fingerprinted and that the prints are forwarded to the FBI for criminal record checks. If the applicant has a criminal record, it is forwarded to the Department of Labor; if the record reflects a gambling conviction, the Department can then request further information about the conviction. If the gambling violation was committed in connection with or incident to the applicant's activities as a farm labor contractor, the violation falls within the purview of 7 U.S.C. 2044 as grounds for denial of a certificate.<sup>132</sup>

The Department of Labor reported no instances where followup requests for information were made; the Commission therefore assumes that in no instance did the Department of Labor receive a criminal record indicating a gambling conviction.<sup>133</sup>

The Commission believes the continuation of this protective measure to be in the national interest; apparently,

Congress was of the same belief when, in 1974, it passed amendments to the Farm Labor Contractor Registration Act that broadened the prohibited activities to include prostitution or peonage.<sup>134</sup> Consequently, **the Commission recommends that this statute be retained in its present form.**

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## FCC Proscriptions

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The Federal Communications Commission proscribes the broadcasting of certain horseracing information believed to provide assistance to illegal gambling operations. Licensees must normally wait until 30 minutes after a race has been run before broadcasting information concerning the outcome. This proscription struck at the practice of illegal horse bettors' using the winnings of previous bets as the basis for subsequent wagers. If a bettor could not obtain the result of his wager on the first race until after the second race was run, it was believed that he was less likely to place a bet on that second race. The policy was established pursuant to the Communications Act of 1934, which requires the FCC to serve the "public convenience, interest, and necessity," since in this case the "public interest" was found to dictate a suppression of gambling related to organized crime.<sup>135</sup> No administrative sanctions have ever been issued under this policy,<sup>136</sup> and it has never been extended to the broadcasting of information about other sporting events on which wagering, legal or illegal, takes place.

That this proscription has had an effect on illegal horserace wagering is evidenced by the complicated methods devised by illegal bookmakers to acquire race results and prices promptly, and by the elimination of illegal "wirerooms" around the country. However, in an era when wagering on sporting events—as opposed to wagering on horseracing—has become the major form of illegal gambling, the FCC policy may be overly selective. There is abundant evidence that sports betting is greatly affected by the broadcasting of the results or of the events themselves. Moreover, the same kind of sequential betting which characterizes horse betting also characterizes some sports betting; a bettor may place bets for evening games only after he has received the results of games played earlier in the day. **The Commission believes that the FCC proscription of horseracing broadcasts should be modified to treat consistently all information needed in illegal wagering operations.** The FCC should reevaluate whether its proscription should be broadened to include sporting events, or narrowed to cover only the immediate broadcast of the prices paid on a winning racehorse, thus permitting the broadcast of the race results themselves. In revising its policy, the FCC must consider the practical differences between horse betting and sports betting, and whether the broadcasting of information—e.g., point spreads—projecting the outcome of sporting events should not be curtailed.

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## Department of Defense Practices

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As a general rule, United States military personnel are not permitted to gamble while on Government property or while on duty. There are exceptions, however; for example, the Air Force allows limited card games or nominal games of chance to take place in open mess facilities where these activities do not violate local law or custom. All three branches of the armed services permit controlled bingo games on Government installations. While the Army and the Air Force prohibit the operation of gaming devices, the Navy authorizes their use at overseas Navy and Marine Corps club facilities outside United States territory, where United States and foreign laws permit. The devices are carefully controlled, and detailed regulations specify the rate of payback, auditing procedures, and related matters. Revenues from the devices benefit the clubs and messes. Other forms of gambling are prohibited at Navy clubs, with the exception of dice cups at the bar.

The military codes of conduct also cover gambling-related activities by restricting behavior which is not in the best interest of the services; for example, Air Force officers are not permitted to gamble with enlisted men. The Army, Navy, and Air Force all require off-duty personnel to conform with the criminal gambling statutes of the jurisdictions within which they are located.<sup>137</sup> **The Commission believes that no changes in the policies are necessary.**

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## Sports Bribery

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Prior to 1964, 18 U.S.C. 1952 was the sole tool afforded the Federal Government in its attempt to prosecute sports bribery violations involving interstate commerce.<sup>138</sup> This statute was of limited scope, however, because its application was contingent upon the violation having occurred in a State which had enacted laws proscribing sports bribery. Before 1964, 12 States had enacted no such statutes, even though they had considerable interest in the conduct of sporting events.<sup>139</sup> Furthermore, in those States which had enacted sports bribery statutes, State and local law enforcement had become increasingly more difficult because of the significant interstate nature of the criminal activity involved and the inadequacies of those statutes relied upon to control it. State law enforcement agencies were thus handicapped either by an absence of adequate laws in this area of concern or by jurisdictional limitations. The Federal Government was similarly handicapped by a lack of comprehensive statutory authority to assert its full police powers. This lack of Federal authority was remedied in part by the enactment of Public Laws 87-216, 87-218, and 87-228 during the first session of the 87th Congress, but such authority was still narrowly confined and restrained. It was in response to this circumscription of Federal involvement and the rise of organized criminal activities in this area that section 1952 was supplanted in 1964 by 18 U.S.C. 224.<sup>140</sup>

The purpose of this statute is to make it a Federal criminal offense to influence, by bribery, any sporting contest through the use of interstate commerce of any facility for transportation or communication. Unlike section 1952, this legislation is not limited by any consideration of whether the violation must occur in a State having laws proscribing such activity before the statute becomes effective. Furthermore, this statute is not intended to relieve or abrogate the responsibility of colleges or professional sporting associations to enforce their obligations or regulations respecting sports bribery, or to affect or interfere with the efforts of local law enforcement agencies against local violations.<sup>141</sup> This legislation merely affords Federal authorities the capacity to control interstate conspiracies beyond the capacity of the local authorities and to close the jurisdictional gaps previously encountered. As described by Senator Kenneth Keating in Senate Report No. 593 (October 22, 1963):

This bill would provide the authority our law enforcement agencies need to prevent gamblers from corrupting college and professional sports. It would halt the contamination of sports by organized gambling syndicates by punishing any players or officials as well as gamblers who attempt to corrupt these games for personal gain. It would cover schemes to affect the point spread in a contest as well as to throw the game entirely and would apply to every case in which interstate facilities—such as the telephone or the mails—have been used to carry out the conspiracy.<sup>142</sup>

Beyond relieving jurisdictional encumbrances, the second major premise upon which this statute is based was the notion that sports betting had become a favorite outlet of organized crime and that the profits made from the

bribery of athletic contestants are central to the nourishment of other illegal activities. As characterized by the Department of Justice in its review of this legislation, section 224 constitutes “a further step toward strengthening the supporting role of the Federal Government in the assault on organized crime.”<sup>143</sup> The leaders of many associations responsible for regulating sporting events also espoused the assertion that a pervasive criminal conspiracy had invaded college campuses and sports arenas and that Federal involvement was necessary to preserve public confidence in the conduct of those events. Thus, as in the majority of the gambling statutes enacted during this period, the impetus of organized crime control was a significant catalyst in the enactment of section 224.

The most recent data from the FBI show that, since 1970, seven convictions have been realized under this statute.<sup>144</sup> Although specific details about the nature of these offenses have not been provided to the Commission, it has been found that four convictions involved superfecta harness-racing violations,<sup>145</sup> two involved bribery of football players,<sup>146</sup> and one involved off-track betting.<sup>147</sup> None of these convictions involved organized crime figures and none of the courts’ findings addressed the issue of such involvement.

**Nevertheless, the Commission believes the statute to be an effective deterrent to corruption of sports events, and recommends its retention on those grounds.** If there is a move toward legalization of sports betting (see chapter 6), this statute would increase in importance; it would then be appropriate for the Federal Government to have jurisdiction over instances of bribery affecting a State’s revenue-raising potential.

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## ENFORCEMENT POLICIES

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### Criminal Enforcement

Primary responsibility for enforcement of gambling laws was vested in State and local agencies until the early 1960’s. Although the Federal Government has had limited criminal jurisdiction over certain types of illegal gambling since 1948, it had no vigorous enforcement tools at its disposal until 1961, when Congress passed three antiracketeering statutes designed primarily to attack illegal interstate gambling (18 U.S.C. 1054, 1952-1953). Congress felt these statutes were necessary because, given the interstate nature of large gambling operations, no effective attack upon organized illegal gambling was being waged at the local level. In 1970, Federal jurisdiction was extended to cover intrastate gambling operations of a specified size, because these businesses were thought to have a deleterious effect on interstate commerce.

Enforcement of Federal statutes prohibiting gambling is vested in the FBI and in the Department of Justice, which has delegated this responsibility to its Organized Crime and Racketeering Section (OCR). Officials of both agencies have testified extensively before this Commission.<sup>148</sup> The

agencies agree that the most valuable tool available to law enforcement agencies in their fight against illegal gambling is the use of court-authorized electronic surveillance, or “wiretaps.” Wiretaps have been widely used in gambling cases since 1968, when they were legalized under the provisions of Title III of the Omnibus Crime Control and Safe Streets Act. In fact, 72 percent of all Federal wiretaps were used in connection with gambling investigations.<sup>149</sup>

Although Federal officials have testified before this Commission that they believe existing statutes and enforcement procedures are adequate to combat illegal gambling, they concede that there has been no decrease in either the level of interest in, or the availability of, illegal numbers and sports bookmaking. This is not to say, however, that Federal criminal enforcement of gambling statutes has had no effect. On the contrary, the Commission notes that its effectiveness against certain types of illegal games has been demonstrable: Illegal casinos in such cities as Covington, Ky., and Hot Springs, Ark., no longer exist; illegal slot machines, once prevalent in many small communities, are now a rarity; illegal horserace wirerooms and many of the major interstate

layoff operations have ceased operations; and organized criminal control of legalized casino gaming in Nevada appears to be at a minimum. This is attributable to a very positive impact of interstate gambling statutes as applied by Federal enforcement agencies.

However, the same cannot be said of Federal efforts directed toward intrastate gambling businesses such as numbers games or sports bookmakers operating within the confines of a State. In general, Federal officials say judicial and public apathy are the cause of this situation: Only 23 percent of those convicted on gambling charges receive prison sentences, thus severely minimizing the deterrent effect of prosecution. This would seem to be borne out by the correlative statistic showing that approximately 80 percent of those convicted of gambling offenses are recidivists.

The reaction of investigative and prosecutorial agencies toward this public and judicial apathy has apparently been a restructuring of gambling enforcement priorities: In 1971-1972, a program of intensified efforts toward gambling cases was undertaken by the FBI and Justice Department. This program required that top priority be given to gambling investigations and prosecutions over a specified period.

These agencies subsequently determined, however, that even this extensive application of manpower and resources made little dent in the level of illegal gambling. They have now shifted toward a policy of "quality vs. quantity"; that is, only "significant" gambling cases are being investigated and prosecuted at the Federal level.

The Commission finds that the efforts of the FBI and the Department of Justice with respect to illegal gambling enterprises operating interstate have been successful. Certain types of illegal gambling have, due to these efforts, been largely eliminated, and to this extent, the Commission finds that Federal enforcement efforts have been successful.

However, illegal gambling as a whole has not been checked; indeed, the dollar volume of illegal gambling is on the rise. The total resources available for an all-out war against illegal wagering are clearly insufficient. Sufficient results cannot occur, given the manpower available. Today's society demands that this manpower, and these law enforcement resources, be diverted from the fight against gambling to the fight against other types of crime, particularly those involving violence. This demand has apparently been met; gambling cases are not considered items of "top priority." Indeed, the Commission does not feel that they should be, and suggests that **the limited Federal manpower available to combat gambling violators might best be utilized against those conducting an interstate business.**

The Commission has repeatedly attempted to obtain records from these agencies that would permit a cost-benefit analysis of their efforts. In essence, their response has been that such records are not maintained, inasmuch as the actual success of law enforcement cannot be

measured by comparing cost to statistical accomplishments. The Commission disagrees; **it recommends that records hereinafter be maintained that would permit measurement of the cost expended on gambling law enforcement against what such enforcement effort has accomplished.** Thus, Congress may then determine the effectiveness of the statutes in question and the ability of government agencies to carry out responsibilities given them.

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## Tax Enforcement

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The efforts of the Internal Revenue Service have been singularly unsuccessful in curbing illegal gambling. Significant revenues have not been produced through the income tax, since illegal players generally underestimate or fail to report their gambling winnings.

However, there is one area in which Federal tax enforcement has met with success: Tax evasion cases against notorious organized crime figures have often resulted in convictions and incarceration of persons against whom no other violations had been proven.

The excise and occupational stamp taxes on certain gambling enterprises have also produced little revenue when compared to the amount of gambling the IRS believes takes place. The IRS opposed the imposition of these taxes on the grounds that they would be unenforceable, unproductive, and would breed contempt for other tax provisions. Since 1968, there has been virtually no enforcement action directed against failure to pay these taxes, and the Bureau of Alcohol, Tobacco and Firearms, which has been given the responsibility for criminal enforcement of these laws but no funds to support that mandate, has relegated gambling offenses to a low standing in its order of priorities.

In sum, the income tax statutes relating to gambling have proven ineffective as a revenue-producing measure, as a deterrent to illegal gambling, and as a weapon against organized crime. Indeed, the present Commissioner of Internal Revenue has appealed for the elimination of the Service's law enforcement responsibilities. The function of the IRS should be primarily to raise revenues, and in the case of gambling it has been notably unsuccessful.

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## Civil Enforcement

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A relatively recent tool brought to bear upon illegal gambling violators is the civil injunctive procedure provided by 18 U.S.C. 1961, et seq. The Commission finds that the ineffectiveness of the criminal justice system demands alternatives. Although used sparingly to date, civil injunctions imposed upon illegal gamblers may meet with more success, both from the standpoint of judicial enforcement and potential deterrence. **The Commission recommends increased utilization of these techniques combined with modification of existing criminal statutes.**

# FOOTNOTES

## <sup>1</sup> Section 1083. Transportation between shore and ship; penalties

(a) It shall be unlawful to operate or use, or to permit the operation or use of, a vessel for the carriage or transportation, or for any part of the carriage or transportation, either directly or indirectly, of any passengers, for hire or otherwise, between a point or place within the United States and a gambling ship which is not within the jurisdiction of any State. This section does not apply to any carriage or transportation to or from a vessel in case of emergency involving the safety or protection of life or property.

(b) The Secretary of the Treasury shall prescribe necessary and reasonable rules and regulations to enforce this section and to prevent violations of its provisions.

For the operation or use of any vessel in violation of this section or of any rule or regulation issued hereunder, the owner or charterer of such vessel shall be subject to a civil penalty of \$200 for each passenger carried or transported in violation of such provisions, and the master or other person in charge of such vessel shall be subject to a civil penalty of \$300. Such penalty shall constitute a lien on such vessel, and proceedings to enforce such lien may be brought summarily by way of libel in any court of the United States having jurisdiction thereof. The Secretary of the Treasury may mitigate or remit any of the penalties provided by this section on such terms as he deems proper.

<sup>2</sup> Letter from Richard L. Thornburgh, Assistant Attorney General, Criminal Division, U.S. Department of Justice, to James E. Ritchie, September 8, 1976.

<sup>3</sup> H.R. Rep. No. 2769, 81st Congress, 2d Sess. 4 (1950); 1950 U.S. Code Cong. and Ad. News 4243 (1950).

<sup>4</sup> Section 1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.

It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a possession of the United States from any place outside of such State, the District of Columbia, or possession: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: *Provided further*, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

Nothing in this chapter shall be construed to interfere with or reduce the authority, or the existing interpretations of the authority, of the Federal Trade Commission under the Federal Trade Commission Act.

<sup>5</sup> *Supra* note 2.

<sup>6</sup> Report of the Special Committee to Investigate Organized Crime in Interstate Commerce, 1951, and Report of the President's Commission on Law Enforcement and Administration of Justice, 1967.

<sup>7</sup> 1961 U.S. Code Cong. & Ad. News 2631 (1961).

<sup>8</sup> Section 1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State where betting on that sporting event or contest is legal into a State in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

<sup>9</sup> H.R. Rep. No. 967, 87th Cong. 1st Sess. 1; 1961 U.S. Code Cong. and Ad. News 2631 (1961).

<sup>10</sup> *Supra*, note 8.

## <sup>11</sup> Section 1953. Interstate transportation of wagering paraphernalia

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than five years or both.

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

<sup>12</sup> Cornell Law School Gambling Project, *The Development of the Law of Gambling: Federal*, p. 25, Ithaca, New York, 1975.

<sup>13</sup> Section 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

- (1) distribute the proceeds of any unlawful activity; or
- (2) commit any crime of violence to further any unlawful activity; or
- (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

<sup>14</sup> Testimony of Edward Joyce, Deputy Chief, Organized Crime and Racketeering Section, U.S. Department of Justice, before the Commission on the Review of the National Policy Toward Gambling, pp. 17-18, Washington, D.C., May 15, 1974.

<sup>15</sup> *Ibid.*, p. 33.

<sup>16</sup> *Supra* note 14.

<sup>17</sup> *Ibid.*, pp. 18-19. Also, for a more complete discussion of organized crime, see chapter 6, *infra*.

<sup>18</sup> Pub. L. No. 90-351, 82 Stat. 216, June 19, 1968.

<sup>19</sup> *Supra* note 14.

<sup>20</sup> See chapter 6 for a discussion of illegal gambling industries.

<sup>21</sup> See the appendix to this Report for the text of the Commission's proposed Federal gambling statute.

<sup>22</sup> Pub. L. No. 91-452, 84 Stat. 922, Oct. 15, 1970.

<sup>23</sup> *Supra* at 936.

<sup>24</sup> Section 1955. Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

- (1) "illegal gambling business" means a gambling business which—
  - (i) is a violation of the law of a State or political subdivision in which it is conducted;
  - (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
  - (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.
- (2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables and conducting lotteries, policy, bolita or numbers games, or selling chances therein.
- (3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrest, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

<sup>25</sup> 1970 U.S. Code Cong. & Ad. News 4007 (1970).

<sup>26</sup> Letter from Assistant Attorney General Richard L. Thornburgh, Criminal Division, U.S. Department of Justice, to James E. Ritchie, January 16, 1976.

<sup>27</sup> *Ibid.*

<sup>28</sup> Testimony of Jay C. Waldman, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, before the Commission on the Review of the National Policy Toward Gambling, May 11, 1976, Washington, D.C.

<sup>29</sup> See "Sentencing the Federal Gambling Offender," by Bruce Butcher, in the appendix to this Report.

<sup>30</sup> See "Federal Gambling Taxation," by Carol Duncan, in the appendix to this Report.

<sup>31</sup> *Supra* note 14, p. 19.

<sup>32</sup> See Testimony of the Federal Defender Office, Detroit, Michigan, to the Commission on the Review of the National Policy Toward Gambling, June 24, 1975, Detroit, Michigan.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Supra* note 21.

<sup>35</sup> Section 1511. Obstruction of State or local law enforcement

(a) It shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business if—

(1) one or more of such persons does any act to effect the object of such a conspiracy;

(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and

(3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization, except as compensation for actual expenses incurred by him in the conduct of such activity.

(d) Whoever violates this section shall be punished by a fine of not more than \$20,000 or imprisonment for not more than five years, or both.

<sup>36</sup> *Supra* note 22.

<sup>37</sup> See Jonathan Rubinstein, "Gambling Enforcement and Police Corruption"; Carol H. Duncan, "Gambling-Related Corruption," in the appendix to this Report; also see, *Annual Reports, Pennsylvania Crime Commission*, St. Davids, Pennsylvania; John Gardiner, *The Politics of Corruption: Organized Crime in an American City* (New York: Russell Sage Foundation, 1970).

<sup>38</sup> *Supra* note 21.

<sup>39</sup> 1954 U.S. Code Cong. and Ad. News 4155, 4802, S280 (1954).

<sup>40</sup> *United States v. Johnson*, 319 U.S. 503 (1943).

<sup>41</sup> Section 165. Losses

"... (d) Wagering losses. Losses from wagering transactions shall be

allowed only to the extent of the gains from such transactions."

<sup>42</sup> Exhibit No. 27, dated May 1, 1974, submitted by Internal Revenue Service to Commission, p. 10.

<sup>43</sup> *Id.*, p. 2.

<sup>44</sup> *Id.*, p. 1.

<sup>45</sup> *Id.*, p. 3.

<sup>46</sup> *Id.*, p. 5.

<sup>47</sup> Testimony of State lottery officials, April 3, 1974; testimony of Off-Track Betting Officials, May 6-7, 1975.

<sup>48</sup> For a contrary position, see appendix materials regarding the experiences of Great Britain in this area.

<sup>49</sup> Section 7206. Fraud and false statements

Any person who—

(1) Declaration under penalties of perjury.—Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance.—Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) Fraudulent bonds, permits, and entries.—Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) Removal or concealment with intent to defraud.—Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) Compromises and closing agreements.—In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

(a) Concealment of property.—Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(b) Withholding, falsifying, and destroying records.—Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than three years, or both, together with the costs of prosecution.

<sup>50</sup> Section 1441. Withholding of tax on nonresident aliens

(a) General rule.—Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall . . . deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

<sup>51</sup> See Rev. Ruling 58-479, 70-543, and 1970-2 C.B. 173.

<sup>52</sup> Letter from Donald Alexander, Commissioner of Internal Revenue Service, to James E. Ritchie, Executive Director, dated September 8, 1976.

<sup>53</sup> See the appendix to this Report for "Feasibility Study, Tax Exemption for Gambling Winnings," by John Olszewski.

<sup>54</sup> 26 U.S.C. 103 reads in pertinent part:

Section 103. Interest on certain governmental obligations

(a) General Rule.—Gross income does not include interest on—

(1) the obligations of a State, a territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia. . . .

<sup>55</sup> 26 U.S.C. 164 reads in pertinent part:

Section 164. Taxes

(a) General Rule.—Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

. . .

(3) State and local, and foreign, income, war profits, and excess profits taxes.

(4) State and local general sales taxes.

(5) State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels. . . .

<sup>56</sup> Section 4401. Imposition of tax

(a) Wagers.—There shall be imposed on wagers, as defined in section 4421, an excise tax equal to 2 percent of the amount thereof. . . .

(c) Persons liable for tax.—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. . . .



<sup>57</sup> Section 4411. Imposition of tax  
There shall be imposed a special tax of \$500 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

<sup>58</sup> 1954 U.S. Code Cong. and Ad. News 4468, 5127 (1954).  
<sup>59</sup> The Kefauver Committee Report, *Organized Crime*, (Didier, ed. 1951).

<sup>60</sup> Supra note 58.

<sup>61</sup> Pub. L. No. 93-499, Oct. 29, 1974, 88 Stat. 1550.

<sup>62</sup> Supra note 30.

<sup>63</sup> *Marchetti v. United States*, 390 U.S. 39 (1968); *Grosso v. United States*, 390 U.S. 62 (1968).

<sup>64</sup> 26 U.S.C. 4424: Sec. 4424. Disclosure of wagering tax information

(a) General Rule.—Except as otherwise provided in this section, neither the Secretary or his delegate nor any other officer or employee of the Treasury Department may divulge or make known in any manner whatsoever to any person—

(1) any original, copy, or abstract of any return, payment, or registration made pursuant to this chapter,

(2) any record required for making any such return, payment, or registration, which the Secretary or his delegates is permitted by the taxpayer to examine or which is produced pursuant to section 7602, or

(3) any information come at by the exploitation of any such return, payment, registration, or record.

(b) Permissible Disclosure.—A disclosure otherwise prohibited by section (a) may be made in connection with the administration or civil or criminal enforcement of any tax imposed by this title. However, any document or information so disclosed may not be—

(1) divulged or made known in any manner whatsoever by any officer or employee of the United States to any person except in connection with the administration or civil or criminal enforcement of this title, nor

(2) used, directly or indirectly, in any criminal prosecution for any offense occurring before the date of enactment of this section.

(c) Use of Documents Possessed by Taxpayer.—Except in connection with the administration or civil or criminal enforcement of any tax imposed by this title—

(1) any stamp denoting payment of the special tax under this chapter,

(2) any original, copy, or abstract possessed by a taxpayer of any return, payment or registration made by such taxpayer pursuant to this chapter, and

(3) any information come at by the exploitation of any such document, shall not be (used) against such taxpayer in any criminal proceeding.

(d) Inspection by Committee of Congress.—Section 6103 (d) shall reply with respect to any return, payment, or registration made pursuant to this chapter.

<sup>65</sup> Conference Report No. 93-1401, p. 5.

<sup>66</sup> Statement of John Corbin, Assistant Director of the Office of Criminal Enforcement of the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, to the Commission on the Review of the National Policy Toward Gambling, May 10, 1976, Washington, D.C., p. 60.

<sup>67</sup> Supra note 57.

<sup>68</sup> Supra note 30.

<sup>69</sup> Ibid.

<sup>70</sup> Section 1301. Importing or transporting lottery tickets

Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined not more than \$1,000 or imprisoned not more than two years, or both.

Section 1302. Mailing Lottery tickets or related matter

Whoever knowingly deposits in the mail, or sends or delivers by mail:

Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift enterprise, or scheme;

Any newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes;

Any article described in section 1953 of this title—

Shall be fined not more than \$1,000 or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years.

Section 1303. Postmaster or employee as lottery agent

Whoever, being a postmaster or other person employed in the Postal Service, acts as agent for any lottery office, or under color of purchase or otherwise, vends lottery tickets, or knowingly sends by mail or delivers any

letter, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes awarded by means of any such scheme, shall be fined not more than \$100 or imprisoned not more than one year, or both.

Section 1304. Broadcasting lottery information

Whoever broadcasts by means of any radio station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Each day's broadcasting shall constitute a separate offense.

Section 1307. State-conducted lotteries

(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to an advertisement, list of prizes, or information concerning a lottery conducted by a State acting under the authority of State law—

(1) contained in a newspaper published in that State, or

(2) broadcast by a radio or television station licensed to a location in that State or an adjacent State which conducts such a lottery.

(b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing to addresses within a State of tickets and other material concerning a lottery conducted by that State acting under authority of State law.

(c) For the purposes of this section, "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(d) For the purposes of this section "lottery" means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. "Lottery" does not include the placing or accepting of bets or wagers on sporting events or contests.

Section 3005. False representations; lotteries

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which—

(1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender; and

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money order or postal note.

(b) The public advertisement by a person engaged in activities covered by subsection (a) of this section, that remittances may be made by mail to a person named in the advertisement, is prima facie evidence that the latter is the agent or representative of the advertiser for the receipt of remittances on behalf of the advertiser. The Postal Service may ascertain the existence of the agency in any other legal way satisfactory to it.

(c) As used in this section and section 3006 of this title, the term "representative" includes an agent or representative acting as an individual or as a firm, bank, corporation, or association of any kind.

(d) Nothing in this section shall prohibit the mailing of (1) a newspaper of general circulation published in a State containing advertisements, lists of prizes, or information concerning a lottery conducted by that State, acting under authority of State law, or (2) tickets or other materials concerning such a lottery within that State to addresses within that State. For the purposes of this subsection, "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

[For text of 18 U.S.C. 1953 (b) (4) see note 11, supra.]

<sup>71</sup> 18 U.S.C. 1307.

<sup>72</sup> Testimony of John D. Tarpey, Assistant Chief Inspector, U.S. Postal Service, before the Commission on the Review of the National Policy Toward Gambling, Washington, D.C., June 26, 1974.

<sup>73</sup> Letter from Ashton R. Hardy, General Counsel, FCC, to James E. Ritchie, Executive Director, undated.

<sup>74</sup> *United States v. New Hampshire Sweepstakes Commission*, CIV 76-60 SD, Portland, Maine.

<sup>75</sup> Letter from George C. Davis, Assistant General Counsel, U.S.

Postal Service, to Postmaster, Miami, Florida, February 8, 1972.

<sup>76</sup> H.R. Rep. No. 93-1517; Senate Report No. 93-1404.

<sup>77</sup> Memorandum from G. Robert Blakey, Professor of Law, Cornell University, to James E. Ritchie, Executive Director, August 15, 1975.

<sup>78</sup> Section 25a. Participation by national banks in lotteries and related activities—Prohibited activities

(a) A national bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

*Use of banking premises prohibited*

(b) A national bank may not permit—

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a) of this section, or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a) of this section.

*Definitions*

(c) As used in this section—

(1) The term “deal in” includes making, taking, buying, selling, redeeming, or collecting.

(2) The term “lottery” includes any arrangement whereby three or more persons (the “participants”) advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the “winners”) will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term “lottery ticket” includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

*Lawful banking services connected with operation of lotteries*

(d) Nothing contained in this section prohibits a national bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

*Regulations; enforcement*

(e) The Comptroller of the Currency shall issue such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

Section 339. Participation by State member banks in lotteries and related activities—Prohibited activities

(a) A State member bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

*Use of banking premises prohibited*

(b) A State member bank may not permit—

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a) of this section, or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a) of this section.

*Definitions*

(c) As used in this section—

(1) The term “deal in” includes making, taking, buying, selling, redeeming, or collecting.

(2) The term “lottery” includes any arrangement whereby three or more persons (the “participants”) advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the “winners”) will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes:

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term “lottery ticket” includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

*Lawful banking services connected with operation of lottery*

(d) Nothing contained in this section prohibits a State member bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of a lottery.

*Regulations; enforcement*

(e) The Board of Governors of the Federal Reserve System shall issue such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

Section 1829a. Participation by State nonmember insured banks in lotteries and related activities—Prohibited activities

(a) A State nonmember insured bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

*Use of banking premises prohibited*

(b) A State nonmember insured bank may not permit—

(1) The use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a) of this section, or

(2) direct access by the public from any of its banking offices to any

premises used by any person for any purpose forbidden to the bank under subsection (a) of this section.

*Definitions*

(c) As used in this section—

(1) The term “deal in” includes making, taking, buying, selling, redeeming, or collecting.

(2) The term “lottery” includes any arrangement whereby three or more persons (the “participants”) advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the “winners”) will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term “lottery ticket” includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

*Lawful banking services connected with operation of lottery*

(d) Nothing contained in this section prohibits a State non-member insured bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

*Regulations; enforcement*

(e) The Board of Directors shall prescribe such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

Section 1730c. Participation by insured institutions in lotteries and related activities—Prohibited activities

(a) An insured institution may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

*Use of banking premises prohibited*

(b) An insured institution may not permit—

(1) the use of any part of any of its own offices by any person for any purpose forbidden to the institution under subsection (a) of this section, or

(2) direct access by the public from any of its own offices to any premises used by any person for any purpose forbidden to the institution under subsection (a) of this section.

*Definitions*

(c) As used in this section—

(1) The term “deal in” includes making, taking, buying, selling, redeeming, or collecting.

(2) The term “lottery” includes any arrangement whereby three or more persons (the “participants”) advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the “winners”) will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term “lottery ticket” includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

*Lawful services connected with operation of lottery*

(d) Nothing contained in this section prohibits an insured institution from accepting funds from, or performing any lawful services for, a State operating a lottery, or an officer or employee of that State who is charged with the administration of the lottery.

*Regulations; enforcement*

(e) The Federal Home Loan Bank Board shall prescribe such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

79 Letters: Chester B. Feldberg, Secretary to the Board of Governors of the Federal Reserve System, to James E. Ritchie, Executive Director, July 29, 1974; Roger A. Hood, Assistant General Counsel, FDIC, to Charles H. Morin, Commission Chairman, July 15, 1974; William T. Nachbaur, Assistant General Counsel, FHLBB, to James E. Ritchie, Jan. 7, 1975.

80 P.L. No. 91-452, Oct. 15, 1970, 84 Stat. 922, provides in part:

“It is the purpose of this Act . . . to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.”

81 Section 1961. Definitions

As used in this chapter—

(1) “Racketeering activity” means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which



is indictable under any of the following provisions of title 18, United States Code: section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2421-24 (relating to white slave traffic); (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

#### Section 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity of the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the

provisions of subsections (a), (b), or (c) of this section.

#### Section 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

(b) In any action brought by the United States under this section the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeiture for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred under the provisions of this section, insofar as applicable and not in the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

#### Section 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

<sup>84</sup> See *United States v. Cappetto*, 502 F.2d 1351 (7th Cir. 1974).

<sup>85</sup> 18 U.S.C. 1084.

<sup>86</sup> 18 U.S.C. 1953.

<sup>87</sup> 18 U.S.C. 1955.

<sup>88</sup> See *Cappetto*, supra, note 84.

<sup>89</sup> See supra note 83.

<sup>90</sup> See *Cappetto*, supra, note 84.

<sup>91</sup> *Fed. R. Civ. Proc.* Rule 3.

<sup>92</sup> *Id.*, Rule 4.

<sup>93</sup> *Id.*, Rule 8.

<sup>94</sup> *Id.*, Rule 15.

<sup>95</sup> *Id.*, Rule 26.

<sup>96</sup> See *Kastiger v. United States*, 406 U.S. 441 (1972).

<sup>97</sup> *Fed. R. Civ. Pro.*, Rule 37.

<sup>98</sup> Supra notes 83 and 88.

<sup>99</sup> See the appendix to this Report for the Commission's proposed statutes for the States and the Federal Government, which include extensive civil remedy provisions.

<sup>100</sup> See the appendix to the Report for "Federal Enclaves," by Peter Waldmeir.

<sup>101</sup> *Worcester v. Georgia*, 31 U.S. 515 (1831).

<sup>102</sup> United States Constitution, Art. I, Section 8, cl. 3.

<sup>103</sup> *Kake Village v. Egan*, 369 U.S. 60 (1962).

<sup>104</sup> *United States v. Blackfoot Tribe*, 364 F. Supp. 192 (USDC-D Mon. 1973).

<sup>105</sup> *Id.*

<sup>106</sup> Section 13. Laws of States adopted for areas within Federal jurisdiction.

Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any

act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, territory, possession, or district in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

<sup>107</sup> *Cramer v. United States*, 261 U.S. 219 (1923).

<sup>108</sup> Pub. L. No. 280-984, 82 Stat. 73 (1968).

<sup>109</sup> *Santa Rosa Band of Indians v. Kings County*, 532 F. 2d 655, 659 (9th Cir. 1975).

<sup>110</sup> *Supra* note 108, at Section 402(b).

<sup>111</sup> *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973).

<sup>112</sup> 15 U.S.C. 1175 (1951).

<sup>113</sup> See United States Constitution, Art. I, Section 8, cl. 317.

<sup>114</sup> See *Paul v. United States*, 371 U.S. 245 (1963).

<sup>115</sup> This classification is taken from *Department of the Army Pamphlet*, No. 27-21 (Oct. 1973).

<sup>116</sup> *Supra* note 112.

<sup>117</sup> *Supra* note 106.

<sup>118</sup> *Williams v. United States*, 327 U.S. 711 (1946).

<sup>119</sup> See, *Department of the Army Pamphlet*, No. 27-21, 6-135 (15 Oct. 1973); See, General Counsel, DOD Memo (9 Feb. 1976); See, General Counsel, DOD Memo (2 February 1976).

<sup>120</sup> United States Constitution, Art. IV, Section 3.

<sup>121</sup> *Id.*

<sup>122</sup> 15 U.S.C. 1171(b).

<sup>123</sup> *Supra* note 70.

<sup>124</sup> 61 Stat. 319 (1950); 48 U.S.C. 731 et seq. (1952); See, 64 Stat. 319 (1950).

<sup>125</sup> 48 U.S.C. 734; See also, 15 U.S.C. 1171(b).

<sup>126</sup> *Id.*

<sup>127</sup> *Leibowitz, The Applicability of Federal Law to the Commonwealth of Puerto Rico*, 56 Georgetown L.J. 219 (1967).

<sup>128</sup> 8 U.S.C. 1101 provides in pertinent part: Section 1101.

#### Definitions

(f) For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period; . . .

8 U.S.C. 1182 provides in pertinent part: Section 1182. Excludable aliens—General classes

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime; except that aliens who have committed only one such crime while under the age of eighteen years may be granted a visa and admitted if the crime was committed more than five years prior to the date of the application for a visa or other documentation, and more than five years prior to date of application for admission to the United States, unless the crime resulted in confinement in a prison or correctional institution, in which case such alien must have been released from such confinement more than five years prior to the date of the application for a visa or other documentation, and for admission, to the United States. Any alien who would be excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of Title 18, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of Title 18, by reason of the punishment which might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: *Provided*, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense.

(10) Aliens who have been convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement actually imposed were five years or more; . . .

<sup>129</sup> Letter from Sam Bernsen, Acting General Counsel, INS, U.S. Department of Justice, to Charles H. Morin, Chairman, July 9, 1974.

<sup>130</sup> 7 U.S.C. 2044 reads in pertinent part: Section 2044. Issuance of certificate of registration—persons qualified

(b) Upon notice and hearing in accordance with regulations prescribed by him, the Secretary may refuse to issue, and may suspend, revoke, or refuse to renew a certificate of registration to any farm labor contractor

if he finds that such contractor—

(6) has recruited, employed, or utilized the services of a person with knowledge that such person is violating the provisions of the immigration and nationality laws of the United States;

(7) has been convicted of any crime under State or Federal law relating to gambling. . . .

<sup>131</sup> Letter from Harold C. Nystrom, Associate Solicitor, Division of General Legal Services, Department of Labor, to Charles H. Morin, Chairman, August 5, 1974.

<sup>132</sup> *Id.*; also see letter from M. H. Moskow, Acting Secretary of Labor, to James E. Ritchie, Executive Director, September 2, 1976.

<sup>133</sup> *Supra* note 131.

<sup>134</sup> Letter from M. H. Moskow, *supra* note 132.

<sup>135</sup> Section 303. Powers and duties of Commission

Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this chapter: *Provided*, however, That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this chapter will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(l) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such citizens or nationals of the United States as the Commission finds qualified, except that in issuing licenses for the operation of radio stations on aircraft the Commission may, if it finds that the public interest will be served thereby, waive the requirement of citizenship in the case of persons holding United States pilot certificates or in the case of persons holding foreign aircraft pilot certificates which are valid in the United States on the basis of reciprocal agreements entered into with foreign governments;

(m) (1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

(A) Has violated any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) false or deceptive signals or communications, or

(2) a call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) has willfully or maliciously interfered with any other radio communications or signals; or

(F) has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(m) (2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this chapter;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation.

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

(s) Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is

imported from any foreign country into the United States, for sale or resale to the public.

<sup>136</sup> Letter from Ashton R. Hardy, *supra* note 73.

<sup>137</sup> Letter and enclosures from Richard A. Wiley, General Counsel, Department of Defense, to James E. Ritchie, Executive Director, March 3, 1976. See also that part of this chapter entitled "Federal Enclaves."

<sup>138</sup> 1964 U.S. Code Cong. and Ad. News 2250 (1964).

<sup>139</sup> House Report No. 1053, Dec. 17, 1963.

<sup>140</sup> Senate Report No. 593, Oct. 22, 1963.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*, p. 2.

<sup>143</sup> *Id.*, p. 3.

<sup>144</sup> Telephone interview with FBI Special Agent Walter Mangiacotti, Washington, D.C., June, 1976.

<sup>145</sup> *United States v. Gerry*, 515 F.2d 130 (2d Cir. 1975).

<sup>146</sup> *United States v. Nolan*, 420 F.2d 552 (5th Cir. 1969).

<sup>147</sup> *United States v. Pinto*, 503 F.2d 718 (2d Cir. 1974).

<sup>148</sup> See generally Hearings of the Commission on the Review of the National Policy Toward Gambling, May 15, 1974; June 26, 1974; May 10-11, 1976; Washington, D.C.

<sup>149</sup> Report of the National Wiretap Commission, *Electronic Surveillance*, Washington, D.C., p. 267.



# CHAPTER 3. STATE AND LOCAL GAMBLING ENFORCEMENT

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## INTRODUCTION

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Most of the responsibility for enforcing antigambling law rests with local police departments. It has been, and remains, an onerous responsibility. Enforcement efforts have never had more than a minimal impact on illegal bookmaking and numbers. Most local enforcement efforts result in the arrest of low-level gambling offenders. Repeatedly, investigations of police departments have found gambling—particularly numbers and bookmaking—to be a prime source of systemic corruption. Even where gambling enforcement is not frustrated by widespread corruption, the difficulties inherent in this area of law enforcement have generated morale problems among lawmen.

Contradictory gambling policies and lack of resources combine to make effective gambling law enforcement an impossible task under present conditions. Reasons for the failure of gambling enforcement are not hard to find. One is that police believe citizens to have little interest in the vigorous enforcement of antigambling laws. This view is only partially correct, however. The Commission's national survey established that although most people—even those who do not favor legalization or decriminalization—regard gambling as having very low priority for police activity, there is more public support for gambling enforcement than is generally recognized. Nearly half the citizens surveyed thought it "very important" to enforce gambling laws, and over half thought that bookmakers should be arrested and jailed.

Another reason is the leniency of the courts in gambling cases, and its effect on law enforcement personnel. The almost uniformly light sentences given to persons convicted of gambling offenses bear out the police view that judges do not regard gambling offenders as serious

threats to the community. Similarly, prosecutors appear to reduce charges or decline prosecution in a substantial number of gambling cases presented by police.

Finally, the people who run illegal gambling operations have often been connected with political machines, so that corruptive influences may reach beyond the police department and make honest enforcement even more difficult.

The trend in gambling enforcement in recent years, perhaps in response to these problems, has been toward less activity by city police departments, together with an increasing role for State and Federal authorities.

Central to any discussion of illegal gambling is the fact that "gambling" refers not to a single entity, but to a number of diverse activities that have differing implications for law enforcement. Illegal games vary in their structure from highly organized operations—for instance, the intricate network of locations and employees involved in a large numbers operation—to the spontaneity of street-corner cardplaying among friends. A numbers operator who pays protection to police and channels profits into narcotics poses a substantially different threat to the community than does a social club sponsoring bingo or card games for its members. Public social gambling and the lower levels of numbers operations are subject to enforcement without use of the sophisticated tools and procedures required to reach bookmakers, numbers bosses, and organized card or dice games. Finally, the nature and size of illegal gaming operations vary by geographical region and by city size. Thus the task of gambling enforcement is not exactly the same for all police departments, nor is it the same within a single department for all types of illegal gambling.

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## ARREST TRENDS

In 1974, the most recent year for which nationwide figures are available, an estimated 61,900 persons were arrested for gambling in the United States.<sup>1</sup> Gambling arrests accounted for 0.7 percent of the estimated 9 million arrests made for all offenses that year.

There are several characteristics of, and trends in, gambling arrests that are important to the study of this

area of law enforcement. For the past decade and a half, there has been a steady and substantial decline in gambling arrests. Between 1973 and 1974, arrests for gambling violations dropped 11 percent. During the 14 years from 1960 to 1974, gambling arrests declined 67.7 percent, while during the same period arrests for all offenses rose 33 percent.<sup>2</sup>

Since 1972, the FBI's Uniform Crime Reports have included separate figures for three categories of gambling arrests: bookmaking, numbers/lottery, and all other gambling.<sup>3</sup> The latter category consists primarily of card and dice arrests which are usually low-level street arrests. Included in this category in such enforcement activity is the arrest or citing of participants in a streetcorner crap game.<sup>4</sup> In 1974, 79 percent of gambling arrests were for "all other gambling." In the 3 years since 1972, "all other gambling" arrests have increased in relation to arrests for bookmaking and numbers/lottery (table 3-1).

TABLE 3-1.—U.S. GAMBLING ARRESTS BY TYPE OF GAME, 1972-1974

	1972	1973	1974
Bookmaking	10%	9%	8%
Numbers/Lottery	20%	17%	13%
ALL Other Gambling	70%	74%	79%
TOTAL NUMBER OF GAMBLING ARRESTS	78,600	68,300	61,900

In addition to the prohibitions aimed at the operators and employees of gambling enterprises, the statutes of some jurisdictions prohibit betting as well. Although it appears that there are wide variations in efforts to enforce betting prohibitions,<sup>5</sup> available data are insufficient to support even a general statement of the extent to which these laws are enforced.

Most gambling arrests are made by police departments in large urban areas. In 1974, 66 percent of gambling arrests were made in cities with populations of over 250,000, while only 10 percent were made in cities with populations of between 100,000 and 250,000. Fourteen percent of gambling arrests in 1974 were in suburban and rural jurisdictions.<sup>6</sup> The rate of gambling arrests per 100,000 persons for the various population groups also highlights the fact that most gambling arrests are made in large cities. The 1974 rate for cities over 250,000 (86.8 arrests per 100,000) is slightly more than twice that of cities between 100,000 and 250,000, which have the next highest rate, 40.9 per 100,000.

There is substantial variation in the rate of gambling arrests in major cities. In 1973, there were six cities with populations over 250,000 which had a gambling arrest rate

TABLE 3-2.—MAJOR CITY GAMBLING ARREST RATES, 1973

	1973 Gambling arrests	Estimated 1973 population (1,000's)	Gambling arrest rate per 100,000 population		1973 Gambling arrests	Estimated 1973 population (1,000's)	Gambling arrest rate per 100,000 population
Newark	1,356	368	368.5	Oklahoma City*	223	374	59.6
Cleveland	2,432	679	358.2	Toledo	187	377	49.6
Kansas City, Mo.	1,612	488	330.3	Austin	127	291	43.6
St. Louis	1,804	558	323.3	New York*	3,291	7,647	43.0
Memphis	2,053	659	311.5	Miami	150	354	42.3
Honolulu	1,012	325	311.4	Oakland	144	346	41.6
Dallas*	2,295	816	281.3	Omaha	157	377	41.6
Chicago	7,082	3,173	223.2	Buffalo	150	425	35.3
Fort Worth	800	360	222.2	Columbus, Ohio	166	541	30.7
Norfolk	578	283	204.2	Detroit	345	1,387	24.9
Houston	2,664	1,320	201.8	Seattle	123	503	24.5
Indianapolis	1,400	728	192.3	Wichita	59	261	22.6
Los Angeles	5,004	2,747	182.2	Akron	44	262	16.8
Washington, D.C.	1,304	734	177.7	El Paso	55	353	15.6
Philadelphia	3,225	1,862	173.2	Birmingham	42	296	14.2
Cincinnati	622	426	146.0	Charlotte*	33	285	11.6
Louisville*	478	336	142.3	Long Beach	35	347	10.1
Atlanta	626	451	138.8	Phoenix	56	637	8.8
San Antonio	1,047	756	138.5	San Diego	59	757	7.8
Tulsa	454	335	135.5	Portland, Oregon	27	378	7.1
Baltimore	1,174	878	133.7	Sacramento*	17	267	6.4
Rochester	329	277	118.8	San Jose	28	523	5.4
Jacksonville*	403	522	77.2	Denver	24	516	4.7
Jersey City	182	255	71.4	St. Paul	5	287	1.7
San Francisco	480	687	69.9	Minneapolis	6	382	1.5
Boston	414	618	67.0	Albuquerque	4	274	1.5
New Orleans	356	573	62.1	Milwaukee	6	691	0.9
Tampa	165	276	59.8	Tucson	0	308	0

\*Based on 1972 arrests.

in excess of 300 per 100,00 population. Eleven other cities of comparable size reported gambling arrests at a rate less than 10 per 100,000. In table 3-2, 56 major cities are ranked according to their gambling arrest rate for 1973.

Although large-city gambling arrests account for the majority of all gambling arrests, such arrests are declining at a faster rate than in other population groups. Most of the overall decline in gambling arrests during the past 5 years is due to the sharp decrease in gambling arrests in cities with more than 250,000 people. During the same period, suburban gambling arrests rose slightly, while the rate of gambling arrests in cities between 10,000 and 250,000 remained relatively stable. Gambling arrests in cities under 10,000 increased somewhat. There has been a slight decline in rural gambling arrests<sup>7</sup> (table 3-3).<sup>8</sup>

TABLE 3-3.—U.S. GAMBLING ARRESTS BY POPULATION GROUP, 1969 AND 1974

	Percent of all gambling arrests		Rate per 100,000 population	
	1969	1974	1969	1974
CITY				
GAMBLING ARRESTS	94	93	67.3	41.1
Over 250,000	78	66	148.9	86.8
100,000-250,000	7	10	39.5	40.9
50,000-100,000	4	6	19.1	19.2
25,000-50,000	2	4	13.6	13.8
10,000-25,000	2	3	9.2	9.4
Under 10,000	1	3	6.2	12.7
SUBURBAN				
GAMBLING ARRESTS	5	12	10.6	11.7
RURAL				
GAMBLING ARRESTS	1	2	14.4	6.3
TOTAL				
GAMBLING ARRESTS	—	—	54.3	34.2

Source: Uniform Crime Reports.

Persons arrested for gambling tend to be older than those arrested for other offenses. In 1974, the average age of persons arrested for gambling was 38.5; for persons arrested for all offenses, it was 26.8. (See table 3-4 for age distribution.) The 1969 age distribution approximates that of 1974; however, the ages of all persons arrested in 1974, including gambling arrests, tended to be slightly higher than in 1969.

Women are arrested at a lower rate for gambling offenses than for all offenses. In 1974, 16.9 percent of those arrested for all offenses were women; however, women accounted for only 8.5 percent of those arrested for gambling offenses. During the years 1960 to 1974, the arrest rate for women, as a percentage of total arrests, has increased more sharply for all offenses than for gambling (table 3-5).

TABLE 3-4.—AGE DISTRIBUTION OF PERSONS ARRESTED IN THE UNITED STATES IN 1974, GAMBLING OFFENSES AND ALL OFFENSES

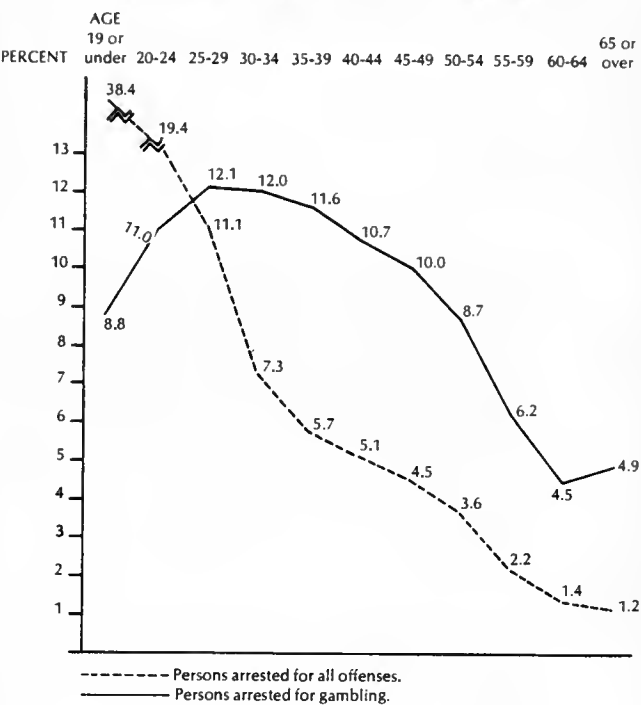


TABLE 3-5.—ARREST OF FEMALES IN THE UNITED STATES FOR GAMBLING AND FOR ALL OFFENSES, 1960 AND 1974

	1960	1974
% Female, Arrests for Gambling	7.9	8.5
% Female, Arrests for All Offenses	10.7	16.9

Gambling arrests by race, as reported by the Uniform Crime Reports, reveal that blacks are arrested for gambling at a substantially higher rate than are whites or other races. Although blacks account for only about 11 percent of the total population of the United States, they accounted for 72.8 percent of gambling arrests in 1974 (table 3-6). Blacks account for a greater percentage of city gambling arrests (75.7 percent) than for suburban (47.2 percent) or rural (31.7 percent) gambling arrests. During the 5-year period 1969 to 1974, arrests of white persons, as a percentage of all gambling arrests, declined 7 percent; at the same time, the percentage for black persons rose 6.3 percent.

Although a disproportionate number of blacks are arrested for gambling, gambling laws or their enforcement cannot be said to be discriminatory in the usual sense. Visibility, rather than race, is the basis for these arrests. Black participation in public social gambling (i.e., card or dice games) and numbers writing is high compared to

TABLE 3-6.—RACE OF PERSONS ARRESTED FOR GAMBLING AND FOR ALL OFFENSES IN THE UNITED STATES, 1974

	% White	% Black	% In- dian	% Chi- nese	% Japa- nese	% All others
Total arrests, all offenses	70.3	26.7	1.5	.1	.1	1.4
<b>TOTAL GAMBLING ARRESTS</b>	22.2	72.8	.1	.2	.5	4.3
% change since 1969	-7.0	+6.3				
City arrests, all offenses	67.5	29.4	1.5	.1	.1	1.5
<b>CITY GAMBLING ARRESTS</b>	20.1	75.7	.1	.2	.5	3.5
% change since 1969	-5.6	+5.9				
Suburban arrests, all offenses	83.9	14.7	.4	—*	.1	.9
<b>SUBURBAN GAMBLING ARRESTS</b>	46.6	47.2	—*	—*	—*	6.1
% change since 1969	-28.9	+22.7				
Rural arrests, all offenses	84.0	11.7	3.0	—*	.1	1.2
<b>RURAL GAMBLING ARRESTS</b>	47.4	31.7	.1	.5	1.7	18.6
% change since 1969	-38.8	+19.3				

\*(-) less than one-tenth of 1 percent.

Source: Uniform Crime Reports.

the participation of whites. Because these offenses are highly visible to police and have straightforward evidentiary requirements, they account for a substantial majority of gambling arrests. On the other hand, bookmaking, private social gambling, and higher levels of numbers operations—in which white participation is greater—are activities that remain largely hidden from police view and are therefore subject to fewer arrests.

Available data suggest that a substantial proportion of persons arrested for gambling have prior arrest records. Forty-seven percent of the gambling defendants to come before the Superior Court of the District of Columbia in 1974 had previously been arrested.<sup>9</sup> More than half of those responding to a Commission-sponsored survey of city police departments said that their departments experience a high recidivism rate for gambling violations. Twenty-five percent said that persons arrested for gambling in their jurisdiction often have a criminal record of nongambling offenses; however, a majority (57 percent), said that gambling arrestees rarely or never have such a record.<sup>10</sup>

Of a sample of gambling offenders arrested in New Jersey between 1969 and 1976, 58 percent had prior records, averaging 3.8 earlier arrests each. Gambling offenses accounted for over half the crimes for which these offenders were previously arrested; violent and property crimes accounted for less than 20 percent.<sup>11</sup>

In an Allegheny County (Pittsburgh), Pa., sample of gambling defendants arrested between 1972 and 1974, 11 percent had four or more previous gambling convictions.<sup>12</sup>

## OBJECTIVES

Police objectives concerning gambling regulations are broader than mere enforcement of the prohibition against various gambling activities: They also include fighting organized crime, maintaining a favorable public image of the police department, keeping undesirable activities or persons out of the city, and maintaining public order. The objective of organized-crime control is reflected both in the intent of some gambling statutes and in the view of some police that illegal gambling is related to organized crime. The objectives of preserving the department's public image and of maintaining public order are somewhat related in that, where open gambling such as street card and dice games is permitted to continue, citizens are likely to conclude that police are either corrupt or derelict in their duty.

While full enforcement of gambling prohibitions is often

the ostensible goal of police departments, the actual goal generally is to achieve some degree of control over illegal gambling—that is, to maintain an enforcement effort sufficient to discourage open, flagrant disobedience of gambling laws and to avoid charges that the police are not doing anything about gambling. Some police administrators are understandably reluctant to admit that their discretion or authority is broad enough to permit the establishing of policies aimed at achieving goals other than that presumed to be intended by statute—total prohibition.

The fact remains, however, that police administrators do have discretion in deciding how much effort is to be made to enforce antigambling laws. And, in the field, police officers have discretion in deciding which, and to a lesser degree how many, gambling offenders to arrest.

Most gambling enforcement officers and chiefs of police



responding to a survey by the International Association of Chiefs of Police (IACP) rated "fighting organized crime" as the most important reason for enforcing gambling laws. At the same time, a majority said that organized crime had little or no connection with illegal gambling in their jurisdictions, although officers from larger cities tended to see more of a connection than those from smaller cities.<sup>13</sup> However, respondents rated the "number of organized crime figures arrested on gambling charges" as the fourth most important measure of gambling enforcement effectiveness, behind "a good record of responding to and

following up citizen complaints," "reduced availability of gambling," and "disruption of gambling operations."

In testimony before the National Gambling Commission, Boston's police commissioner stated that the Boston Police Department's policy in bookmaking enforcement is one of "containment rather than eradication."<sup>14</sup> Representatives of the Chicago Police Department noted that "enforcement activity is not geared toward elimination of gambling, as this is an unreal objective; however, enforcement activity is directed toward ameliorating gambling activity to levels of low incidence and high risk."<sup>15</sup>

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## CONSTRAINTS

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### The Difficulties of Gambling Enforcement

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The failure of full enforcement as a realistic goal has resulted from several constraints on gambling enforcement, involving the difficulties of enforcement, public attitudes, and the actions and attitudes of police and other criminal justice personnel. The failure of citizens to report illegal gambling makes it necessary for police to seek out violations. However, most gamblers restrict their activities to places well hidden from public and police view. Although numbers writing is usually conducted relatively openly, making it susceptible to police observation, numbers offices and banks, bookmakers, and operators of high-stakes card and dice games take elaborate precautions to avoid police detection. Bookmakers often use an answering service or an electronic device such as a "cheese box" to prevent discovery of their location. Numbers writers and others in the lower strata of gambling organizations frequently are not apprised of the identity of superiors or locations beyond those needed to carry out their functions. Other security—such as lookouts circulating near gambling operations, automatic cameras, surveillance of entryways, and doors requiring considerable effort to break down—provide warnings of police raids or other actions and the opportunity to dispose of such evidence as bets recorded on rice paper or the money in a card or dice game.

The interjurisdictional nature of many gambling operations has also increased the difficulty of gambling enforcement. Even if police could successfully disrupt gambling operations within their jurisdiction, other locations of the same organization might exist in neighboring jurisdictions. If police there are unwilling to cooperate, there is little that police in the first jurisdiction can do about it. Even where different police agencies have worked together, their cooperation has often been strained, with each agency somewhat unsure of the other's integrity, or with one agency taking premature action that nullifies the other's efforts.

Prior to 1961 there was, in many States, little to deter police from conducting illegal searches and seizures. In

many instances persons suspected of gambling activities were stopped and searched, and raids conducted without probable cause. The U.S. Supreme Court's 1961 *Mapp v. Ohio* decision, however, held that evidence obtained in violation of the fourth amendment may not be used in court. When *Mapp v. Ohio* made the exclusionary rule mandatory in all States, the difficulty of gambling enforcement was increased for police in States which had not previously adopted an exclusionary rule.

A majority of respondents to the IACP survey thought it "very difficult" to obtain sufficient evidence to make a good case against persons suspected of bookmaking or numbers operations; one-third thought it "very difficult" to obtain evidence against card or dice game operations. Evidence against numbers and bookmaking operations was seen as somewhat more difficult to obtain than evidence in cases involving the sale or distribution of narcotics, and substantially more difficult than in cases involving after-hours liquor sales or possession of marihuana. Similarly, in a survey of Washington, D.C., police officers, respondents evaluated numbers-running and running a poker game as crimes for which it is difficult to make a case stick.<sup>16</sup> Respondents to the Commission's survey of Fraternal Order of Police (FOP) members rated bookmaking, running a numbers operation, and, to a lesser degree, running card or dice games as offenses for which is difficult to make quality arrests.<sup>17</sup>

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### The Priority of Gambling Enforcement

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Public apathy exerts a constraining influence on gambling enforcement. A nationwide survey of citizens conducted for the Commission found that there is widespread community feeling that enforcement of gambling laws is less important than enforcement of laws against crimes of violence and property crimes. Only a fifth of the citizens surveyed think gambling enforcement is more important than enforcement against other vice offenses. Less than one-third of respondents indicated that they would report a person taking illegal sports bets, compared to more than twice that many who said they would report other crimes such as robbery and the sale of

marihuana. The survey found that a majority of citizens nonetheless believe that gambling offenders should be arrested.<sup>18</sup>

Police think public apathy toward gambling enforcement is even greater than do citizens who were surveyed. Eighty percent of the respondents to the Commission's FOP survey agreed that the public does not care if gambling laws are enforced. Three-fourths of the respondents to the IACP survey rated citizen support of police in gambling investigations and arrests as "poor"; fewer than 10 percent rated citizen support as "very good" or "excellent."

The priority that police departments give to gambling enforcement varies with the type of gambling activity. The IACP survey asked police about the level of the enforcement effort against various gambling offenses relative to the effort against other plaintiffless crimes. Enforcement against bookmaking operations was found to be slightly more "active and aggressive" than that directed against after-hours liquor sales and possession of marihuana. Enforcement against those crimes was in turn found to be somewhat more "active and aggressive" than enforcement against numbers and card or dice game operations. Enforcement of laws against the sale or distribution of narcotics was found to be substantially more active than that against any of the above offenses. Participatory gambling offenses as a whole were found to be subject to less active enforcement than operating offenses except for betting with a bookmaker, which was subject to approximately the same enforcement effort as numbers operations.

Police officers appear to be aware, at least indirectly, of the relatively low priority that enforcement against some types of gambling has for their departments. FOP survey respondents believe that laws against bookmaking, numbers, and card or dice game operations are less actively enforced by their departments than laws against such activities as petty larceny, receiving stolen property, and the possession of small amounts of marihuana.

Perhaps the clearest reflection of some police departments' lack of serious commitment to gambling enforcement is the use of arrest quotas. "Meeting the quota" has become often more important than the quality of the gambling enforcement effort, both to administrators and subsequently to officers within a department. When this occurs, the attitudes of officers toward gambling enforcement combine with their perception—a correct one—of the department's view of gambling enforcement as a low-priority effort designed only to produce a series of what might be called "symbolic" gambling arrests—that is, gambling arrests that meet the quota, thereby fulfilling the department's requirements of continuing enforcement activity even though police officers and administrators are well aware that these arrests will result neither in meaningful sentences nor in any significant impact on illegal gambling. Thirty-two percent of the departments responding to the IACP questionnaire use gambling arrest quotas. (The existence of gambling arrest quotas did not vary

significantly with city size, although quotas were found slightly less often in cities over 250,000.)

Police are keenly aware that very little punitive action is likely to be taken against gambling offenders after their arrest. More than 70 percent of FOP respondents agreed that prosecutors would rather not be bothered with gambling cases. Approximately 64 percent believe that gambling defendants are usually found not guilty, and about 85 percent feel that local judges usually give light fines or suspended sentences in gambling cases. A majority of IACP respondents anticipate little or no likelihood of a jail sentence for a felony gambling conviction, and expect that small fines and/or probation are most likely to be given for bookmaking and numbers convictions.

Available statistics indicate that a substantial proportion of persons arrested for gambling either are not prosecuted, are prosecuted on reduced charges, are not convicted, or, if convicted, receive sentences that do not reflect the statutory provisions for gambling offenses.<sup>19</sup> This problem exists, particularly in urban areas, for all classes of offenses.

None of the practices and attitudes discussed here is unique to gambling enforcement; yet few other offenses are subject to this same combination of constraints. Given these constraints, it is not surprising that police do not attempt full enforcement of gambling laws or that their attempts to control gambling are often frustrated.

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## Corruption

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Corruption is yet another constraint on effective gambling enforcement. A number of police departments, both large and small, have experienced corruption related to gambling enforcement.<sup>20</sup> The most recent large-city examples are Philadelphia and New York, where investigative commissions reported widespread and systematic payoffs to both plainclothes and uniform police officers by gambling operators.<sup>21</sup> The Knapp Commission found corruption in the New York City Police Department to be "at its most sophisticated among plainclothesmen assigned to enforce gambling laws." Participation in organized payoffs—a "pad"—netted individual New York plainclothes officers monthly amounts ranging from \$300 to \$1,500. In return for protection from enforcement (except for occasional token arrests) gambling establishments paid as much as \$3,500 a month. In March 1972, 5 months before the Knapp Commission report was published, the Pennsylvania Crime Commission initiated a 2-year investigation of corruption in the Philadelphia Police Department. That commission concluded that the "open and flagrant gambling in every area of the City" which operated "with no apparent interference from the Police Department" was due to the fact that "police throughout the City accept protection money from gamblers."<sup>22</sup> Gambling corruption on a lesser scale has been found in such smaller cities as Carbondale and Reading, Pennsylvania; Syracuse and Schenectady, New York; and New Haven, Connecticut.<sup>23</sup>

Police corruption exists not only in gambling

enforcement, but in other areas as well. Investigations in a number of jurisdictions have also uncovered misconduct related to enforcement of narcotics, prostitution, liquor establishments, construction site regulations, and traffic. These forms of police corruption, like those found in gambling enforcement, are largely an urban problem.

Where it exists, gambling corruption has an impact not only on the quality of gambling enforcement, but in other areas as well. Involvement in gambling payoffs often leads to corruption involving other offenses. The same people who pay for gambling protection may offer money for protection involving narcotics, burglary, or other crimes. Taking gambling payoffs can be merely an intermediate step in a process of progressive corruption.<sup>24</sup> Obviously, widespread corruption in a police department damages the department's capability to perform its function. The control of administrators over personnel is weakened, and officers may neglect their duties in an effort to maintain or increase their income from payoffs.<sup>25</sup>

The most serious consequence of gambling corruption is the loss of public confidence in police integrity. As citizens become aware of police misconduct, they tend to become cynical about law enforcement generally.<sup>26</sup>

Gambling corruption is by no means limited to police. Other parts of the criminal justice system and elected officials have also been affected.<sup>27</sup> Police nevertheless remain the most likely targets for corrupting influences. The fact that police operate at the entry point of the criminal justice system makes them both available and desirable as recipients of payoffs and bribes. Even though generally there is little for gamblers to fear at the hands of prosecutors and courts, it is still advisable to avoid arrest. Often more important than avoiding the arrest itself is avoiding the accompanying seizure of gambling records, which can be highly disruptive to the operation.<sup>28</sup>

Several factors contributing to police gambling corruption lie outside of the direct control of police. Public demand for police services centers around crimes of violence and property crimes, rather than around gambling and other vice offenses.<sup>29</sup> The demand for gambling enforcement is further weakened by the fact that while some forms of gambling are illegal, other, similar forms are legal. The view of gambling as "nonserious" is reinforced when prosecutors reduce charges or decline to prosecute, and when judges give minimal sentences for gambling convictions.<sup>30</sup> The lack of demand for gambling enforcement increases the temptation for police to accept payoffs for nonenforcement.

Corrupt practices in other segments of the community—business, politics, the professions—help create an atmosphere in which corruption becomes acceptable.

Police do, however, have control over departmental policies relating to gambling enforcement and corruption. Unfortunately, this control has not generally been used effectively to control gambling corruption. The traditional public response of police administrators to corruption has been to deny its existence except when scandal has rendered this position untenable. The second-line defense

has been the "rotten apple" theory by which police corruption is said to be caused by a few bad cops in an otherwise clean department.<sup>31</sup> Many police officials have maintained this position even in the face of pervasive, organized gambling corruption and the findings of outside investigative bodies to the contrary. Police efforts to prevent recurring corruption have generally taken the form of new procedures in gambling enforcement and new prohibitions on the activities of gambling enforcement officers. The ineffectiveness of most anticorruption activities "suggest(s) either intentional efforts to deceive the public into believing something is being done or incredible naivete about the effectiveness of administrative procedures."<sup>32</sup>

For some police administrators, the basic task has been largely that of achieving a balance between efficiency and integrity in gambling enforcement. The level of success has not generally been high for either objective. Departments have periodically transferred and/or reorganized gambling enforcement personnel in an effort to combat corruption by disrupting patterns of loyalty among officers who work together for a long period of time and by establishing new lines of command. Underlying the use of arrest quotas is the notion that officers will not accept payoffs from the persons they arrest. Plainclothes officers in the New York City Police Department were once required to keep daily records of all investigative activity, the theory being that the recorded activities could later be verified if misconduct were suspected. Applications for search and arrest warrants necessitated lengthy written justification. In addition to investigative forms and administrative reports generated by individual arrests of gamblers, daily, monthly, and annual reports of gambling enforcement activity were mandatory.<sup>33</sup>

Such administrative controls did not have the desired results. Organized, systemic corruption in gambling enforcement has, in several large departments, survived repeated transfers, reorganizations, and other control efforts. It is a simple matter for officers to collect gambling payoffs on off-duty hours and submit a truthful record of their on-duty activity. Voluminous paperwork requirements are a disincentive to making gambling arrests.

The notion of a tradeoff between integrity and efficiency is also reflected in the practice of limiting the length of time officers may be assigned to gambling enforcement. Although the certainty of transfer reduces the likelihood of corruption, it also reduces the level of expertise and, therefore, of efficiency. Twenty-three percent of the city police departments responding to the IACP survey currently place a limit on gambling assignments.

Gambling corruption is largely, though not exclusively, a problem of large-city police departments. Of the 298 departments surveyed by IACP, 17 percent have, within the past 5 years, investigated officers for alleged misconduct in connection with gambling enforcement. Eleven percent of the departments found officers guilty of such misconduct. Both investigations and findings of misconduct were more frequent in larger cities than in smaller ones (table 3-7).

TABLE 3-7.—MISCONDUCT RELATED TO GAMBLING  
ENFORCEMENT IN CITY POLICE  
DEPARTMENTS, 1972-1976

Cities	Percent reporting investigations	Percent reporting department finding of guilty
250,000 and over (n-36)	30	25
100,000 to 250,000 (n-71)	27	15
50,000 to 100,000 (n-65)	17	12
25,000 to 50,000 (n-119)	9	4

(Based on International Association of Chiefs of Police survey of city police departments, conducted for the National Gambling Commission.)

During the past decade, the attempts of police administrators to combat gambling corruption have become less reactive and more preventive. Perhaps most important has been an increased willingness on the part of police officials to face the fact and extent of police corruption squarely.<sup>34</sup> Instead of denying the magnitude of the problem and attempting to divert attention to corruption in other quarters, many police administrators are making a stronger commitment to corruption control than has been the case in the past. Many departments have created internal affairs units with responsibility for investigating alleged misconduct and, more recently, for identifying areas with corruption potential and developing means for reducing that potential. An additional development has been the increasing emphasis on

education and professionalism in law enforcement, which might be expected ultimately to have an impact on corruption.

In the early 1970's, the New York City Police Department's efforts to control gambling corruption took a new direction. Uniformed officers were directed to make gambling arrests only in the presence of a superior officer. Similarly, supervisors of plainclothes gambling investigators were required to approve and to be present at gambling arrests and the execution of search warrants. In effect, enforcement was restricted to high-level figures in gambling operations, with an emphasis on the quality rather than the quantity of arrests. Low-level arrests were to be made only in response to complaints.

At the same time, the internal affairs emphasis on investigating and punishing wrongdoing was broadened to include intensified efforts to detect and deter corruption. These efforts included surveillance of plainclothes investigators, legal wiretapping of officers thought to be engaged in misconduct, infiltration of gambling operations, and the establishment of phony gambling businesses by police. The most controversial techniques were the Field Associates Program, in which newly assigned plainclothes investigators were recruited to report any misconduct they observed, and "turnarounds," whereby officers found to be involved in misconduct were persuaded to report on colleagues who were also involved.<sup>35</sup>

In 1973 and again in 1974, integrity assessments conducted by the NYPD concluded that "organized systematic corruption (in gambling enforcement) had been virtually eliminated." Although the question of long-term effectiveness will remain unanswered for some years, it is reasonable to anticipate that a sustained effort that targets discretion in gambling enforcement has more likelihood of success than past efforts.

## THE ORGANIZATION OF GAMBLING ENFORCEMENT

### Local

The primary responsibility for enforcement rests with local police departments and, in a few jurisdictions, sheriffs' offices.<sup>36</sup> Various departments approach the task of gambling enforcement in different ways. These variations are most apparent in the organization of gambling enforcement personnel. In some departments there is a specialized, gambling-only unit; in others, a vice unit in which resources are also devoted to nongambling offenses; in still others, usually smaller departments, some officers are assigned to enforce gambling laws, but no separate unit exists. Gambling enforcement is most often concentrated at department headquarters, but in some instances, districts or precincts share the responsibility.<sup>37</sup> Some jurisdictions have formed multiagency task forces to deal with the problem of gambling and other types of organized criminal activity.<sup>38</sup> The gambling enforcement efforts of large departments are more highly structured

than those of smaller departments. Of large-city police departments (in cities with a population of 100,000 or more) responding to the IACP survey, 32 percent have units devoted exclusively to gambling enforcement; of departments in cities under 100,000, 15 percent have such units. Similarly, half the larger departments reported having a separate intelligence unit, while 26 percent of the smaller departments have intelligence units. The commitment of manpower varies with department size. Seventy-two percent of police departments in cities with more than 250,000 residents have officers assigned full-time to gambling enforcement; in cities between 25,000 and 50,000, 2 percent of the departments have full-time gambling enforcement personnel.

Most gambling arrests are made by plainclothes officers.<sup>39</sup> In the IACP survey, half the departments reported no gambling arrests by uniformed officers; another 17 percent reported that fewer than one-tenth of their gambling arrests were made by uniformed officers.

Departments in cities with a population of at least 25,000 and less than 100,000 were less likely than those in larger cities to have gambling arrests made by uniformed officers. Arrests by police officers in uniform were proportionately highest in departments located in cities with a population of less than 100,000. Of course, uniformed officers often played an indirect role in gambling enforcement by providing information about illegal gambling activity to officers assigned to gambling enforcement.<sup>40</sup>

There is wide variation in the gambling enforcement training given to police officers.<sup>41</sup> For instance, the only formal training by the Philadelphia Police Department, as of March 1974, was that provided to recruits—including approximately 10 hours of vice enforcement instruction. In Washington, D.C., the Metropolitan Police Department academy provides only minimal gambling enforcement training, based primarily on the department's General Orders. Officers assigned to gambling enforcement, however, receive 2 weeks of special training.

Prosecutor assistance to police in gambling investigations varies. Forty-eight percent of police departments responding to the IACP survey said prosecutors never advise or assist during the investigative phase of gambling cases. Twenty-five percent said prosecutors become involved in half or more of their gambling investigations; of those, 11 percent said prosecutors assist or advise in all their gambling investigations.

## State

Local police departments have primary responsibility for gambling enforcement, but the role of State-level agencies is growing. This growth has occurred mainly as part of increased State-level efforts against organized crime resulting from the work of legislative and other study commissions, crime investigating commissions, organized-crime prevention councils,<sup>42</sup> and organized-crime control units. Most of these bodies came into being during the late 1960's and early 1970's,<sup>43</sup> many with the assistance of Federal funding.<sup>44</sup>

While the focus of study and investigative commissions has generally been broad, federally assisted organized-crime prevention councils are concerned solely with the organized crime problem and function to define it, to set priorities, and to develop, coordinate, and encourage programs.<sup>45</sup> In 1975, there were organized-crime prevention councils in 14 States (table 3-8).

Intelligence units vary somewhat in function. Some—the New Jersey State Police Intelligence Unit, for instance—work closely with the State investigative-prosecutorial unit. Others, such as the Organized Crime Intelligence Unit of the Maryland State Police, investigate and make arrests. In 1975, there were 20 State-organized crime intelligence units (table 3-8). By that year, 23 States had combined investigative-prosecutorial units modeled after the U.S. Department of Justice's Strike Forces. Most of these units are in the offices of State attorneys general.

TABLE 3-8.—STATE ORGANIZED CRIME PREVENTION/CONTROL GROUPS, 1975

State	Prevention council	Intelligence unit	Investigative-Prosecutive unit
Alabama		X	
Arizona			X
California			X
Colorado	X		X
Connecticut		X	X
Delaware		X	
Florida	X		X
Georgia	X	X	
Hawaii		X	
Idaho			X
Illinois			X
Indiana	X	X	
Iowa			X
Kansas			X
Kentucky		X	
Louisiana			X
Maryland	X	X	
Massachusetts	X		X
Michigan	X	X	X
Minnesota	X		X
Mississippi			X
New Hampshire		X	
New Jersey		X	X
New Mexico			X
New York			X
North Carolina	X	X	
Ohio	X	X	X
Oklahoma	X	X	
Oregon	X		X
Rhode Island		X	X
Tennessee		X	
Texas	X	X	X
Utah			X
Virginia		X	
Washington		X	
West Virginia		X	
Wisconsin			X
Wyoming	X		

Source: *Organized Crime Control Units*, June 1975, Committee on the Office of Attorney General, The National Association of Attorneys General.

Both the intelligence and investigative-prosecutorial units vary in levels of activity and in areas of emphasis. Several have been quite active in gambling enforcement. The combined efforts of the Attorney General's Organized Crime Unit and the State Police Intelligence Unit in Rhode Island during the past few years have resulted in gambling arrests that account for a substantial proportion of that State's total gambling arrests.<sup>46</sup> Eighty percent of the indictments obtained by New York's Organized Crime Task Force during a 15-month period that began in December 1970 were for gambling. In New Jersey, between 1969 and

1974, gambling charges accounted for 27 percent of the indictments obtained by the Attorney General's Special Prosecutions Section. The Special Services department of the Massachusetts State police made approximately 25 percent of all gambling arrests in the State between 1970 and 1973.

A total of 38 States have at least one organized-crime prevention or control group (table 3-8).<sup>47</sup> The upward trend in State-level involvement in gambling enforcement has not reversed the overall downward trend in gambling arrests. State agencies, less restrained by limitations of resources and by the problems of interjurisdictional cooperation that affect the efforts of many local agencies, can often mount a relatively sophisticated and sustained attack against gambling organizations. The eventual impact of the State-level effort may therefore be on the quality rather than on the quantity of gambling arrests.

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## Federal

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The role of Federal agencies in gambling enforcement is discussed in chapter 2. Coordination of Federal and State gambling enforcement efforts with those of local police departments is discussed in the section that follows.

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## Interagency Cooperation

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Police departments surveyed by IACP were asked about the cooperation of Federal, State, and other local agencies in gambling enforcement.<sup>48</sup> Departments in larger cities tended to report a more formal, regular relationship with the Federal Bureau of Investigation and the Internal Revenue Service than those in smaller cities.<sup>49</sup> Eleven percent of the departments in cities having a population of between 25,000 and 49,000 reported no contact with the FBI or IRS. The role of the FBI in gambling enforcement was seen as more important by respondents in cities with a population of 250,000 or more than by those in smaller cities, while respondents in cities with a population of less than 250,000 thought that the role of neighboring police departments, sheriff's offices, and State police was more important.

The IACP survey also asked respondents how important they thought various changes would be in improving the gambling enforcement effort in their jurisdictions. Improved coordination among local law enforcement agencies, and increased State or Federal responsibility, were thought to be less important than increased public support, additional enforcement tools, and more serious treatment by other components of the criminal justice system.

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## GAMBLING ENFORCEMENT TOOLS AND TECHNIQUES

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Illegal gambling, in common with a number of other offenses,<sup>50</sup> has two characteristics which affect the manner in which gambling laws are enforced. First, gambling is a plaintiffless crime—that is, the players are willing participants who, as a rule, do not complain to the police that a crime has been committed. Enforcement activity, therefore, must be initiated by the police, who then act as the complainant on behalf of the community. In contrast, enforcement activity aimed at such crimes as burglaries or muggings usually occurs in response to citizen complaints.<sup>51</sup>

A second factor is that gambling—unlike rapes, robberies, etc., which may be viewed as separate criminal incidents having specific perpetrators—is an organized, ongoing activity that often involves a hierarchical structure.<sup>52</sup> Where there is an identifiable criminal incident, police may be said to have “solved the crime” when they have apprehended the person who committed it: The objective in those cases is clear, and the number of arrests is a partial indicator of police effectiveness. In gambling cases, however, neither criminal incident nor perpetrator is clearly defined.<sup>53</sup> Thus, the number of arrests is less useful as a goal or as a measure of effectiveness. Even a large number of arrests may have no effect on the continuing illegal activity and may leave the principal violators untouched. Gambling enforcement, therefore, involves the use of techniques that enable officers to detect violations that remain largely unreported and to identify

and gather evidence against violators who may be insulated by several layers of employees.

For uniformed police officers, the most frequent source of gambling arrests is the direct observation of illegal gambling activity. Such arrests are primarily “nonserious,” reaching only individual street players or low-level employees of gambling organizations. Arrests at higher levels—i.e., large bookmakers or numbers offices and banks—can rarely, if ever, be made in this manner. They require investigation leading to probable cause for search in arrest warrants. These investigations are the province of plainclothes officers who have traditionally used such techniques as physical surveillance, informant information, and undercover operations.

Surveillance may target individuals or premises. Observing known gamblers visiting a house or club may contribute to probable cause for obtaining a search warrant for those premises. Conversely, surveillance of an individual may lead to the identification of locations that were not previously known to be involved in a gambling operation. Surveillance is one of the most widely used techniques, with only 6 percent of the IACP respondents saying that their department never has physical surveillance in gambling enforcement.

The use of informers is also widespread; 95 percent of the departments responding to the IACP survey reported that they rely on that technique. Informers provide gambling information to police for a variety of reasons.



In some instances they are paid for their information; in others, the consideration may be the reduction or dropping of pending charges. Some persons engaged in illegal gambling seek to improve their own position by informing on their competition. Some informers cooperate with police for reasons that are not always apparent: It may be to get or remain on the good side of a police officer, or to satisfy a personal grudge.

Another source of information is citizen complaints. As noted, these are not made by persons who consider themselves to be victims of a crime in the usual sense. Rather, they may be disgruntled bettors who perhaps have not been paid their winnings; relatives who are concerned for a bettor's well-being; or citizens who complain of a disturbance where persons have gathered to gamble.

Undercover investigators often can accumulate evidence against individuals and an operation by placing bets. With a greater investment of time, undercover operators can often infiltrate an operation and obtain evidence against mid- and upper-level personnel. Eighty-six percent of the IACP respondents reported some use of gambling undercover operations, with large-city departments reporting more frequent use than small-city departments.

In recent years, additional tools have become more widely available for use in State and local gambling enforcement. The most important of these is electronic surveillance, authorized by Congress in 1968 under Title III of the Omnibus Crime Control and Safe Streets Act.<sup>54</sup> Electronic surveillance is particularly well suited for use in gambling investigations because of the dependence of gambling operations on telephones.<sup>55</sup> During 1968, only four States (Arizona, Georgia, Massachusetts, and New York) reported electronic surveillance orders. By the end of 1975, electronic surveillance in gambling cases was authorized in 21 States and the District of Columbia (table 3-9). From 1969 (the first full year for which figures are available) to 1975, the number of gambling electronic surveillance orders increased from 79 to 339. During that same 7-year period, gambling accounted for approximately 50 percent of all electronic surveillance orders.<sup>56</sup> (See table 3-10.)

Also used in gambling investigations is the pen register—a device which records phone numbers dialed from a particular telephone. By attaching a pen register to the telephone line of a gambling location, police can often identify additional locations and persons involved in an illegal gambling operation. Current law regarding the use of pen registers is not clear, nor is information available about the extent to which they are used.<sup>57</sup>

In recent years, there has been a growing amount of State legislation aimed at syndicated or commercial gambling. As of January 1975, syndicated gambling statutes had been enacted in 20 States. Fifteen of these laws were enacted between 1968 and 1974.<sup>58</sup> While statutory definitions vary, the general intent of these laws is to differentiate between casual social gambling among individuals, and syndicated gambling operations, and to provide severe penalties<sup>59</sup> for persons involved in the latter.

TABLE 3-9.—STATES WITH STATUTES AUTHORIZING ELECTRONIC SURVEILLANCE IN GAMBLING CASES, EFFECTIVE DURING 1975

Arizona	Nebraska
Colorado*	Nevada*
Connecticut	New Hampshire
Delaware	New Jersey
District of Columbia	New Mexico
Florida*	New York
Georgia	Oregon**
Kansas*	Rhode Island
Maryland	South Dakota
Massachusetts*	Washington**
Minnesota	Wisconsin*

\*No wiretaps reported in 1975.

\*\*Organized gambling only.

\*\*\*Only if human life is endangered.

\*\*\*\*Commercial gambling only.

Source: Administrative Office of the United States Courts, *Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications*, 1975, p.11.

TABLE 3-10.—STATE ELECTRONIC SURVEILLANCE ORDERS, 1969-1973

Year	All orders	Gambling orders	Percent gambling orders
1969	269	79	29.4
1970	414	205	49.5
1971	531	319	60.1
1972	649	351	54.1
1973	734	365	49.7
1974	607	313	51.6
1975	593	339	57.2
TOTAL	3,797	1,971	51.9

Source: Administrative Office of the United States Courts, *Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications*.

Since 1968, five States have established statewide grand juries<sup>60</sup> which, with jurisdiction unrestricted by local boundaries and with the authority to subpoena witnesses and grant immunity,<sup>61</sup> can be an important investigative tool in gambling enforcement. Several other States<sup>62</sup> permit the Attorney General broad powers in using grand juries for the purpose of investigation, but do not permit the convening of a statewide grand jury. To date, only New Jersey's statewide grand juries have become significantly involved in gambling. Of the 841 indictments returned from 1969 through 1973, 122 (14.5 percent) were for gambling violations. This is nearly twice as many indictments as for any other single type of offense.

Immunity statutes provide another tool that can be useful in gambling enforcement. An immunized witness who refuses to testify can be cited for civil contempt and jailed. Statutes in 39 States authorize the use of immunity in gambling cases<sup>63</sup> (see table 3-11). Twenty-seven of

these States have general immunity statutes,<sup>64</sup> another 10 States specify gambling as one of the offenses for which immunity can be granted, and 2 States authorize the use of immunity in cases involving organized crime.<sup>65</sup> Although the remaining 11 States have immunity statutes, gambling is not among the offenses for which its use is authorized.

It is not known to what extent immunity is in fact used in gambling cases. However, witnesses have traditionally been immunized and compelled to testify in cases in which it is difficult to obtain evidence from sources other than a participant in that offense.<sup>66</sup>

All the techniques and tools discussed above are, or have the potential to be, useful in gambling enforcement; there are some shortcomings, however. Plainclothes gambling enforcement is, by its nature, an activity that cannot be easily supervised. Where a lack of supervision results in an unsystematic, uncoordinated gambling enforcement effort, it is clear that the quality of that effort will suffer. Many departments have used arrest quotas to simplify the task of supervision, rating the performance of units and individual officers according to the number of gambling arrests they make. Where quotas are instituted in an attempt to maintain productivity, the result will almost certainly be an emphasis on the number of arrests—"meeting the quota"—rather than on the quality of the cases.<sup>67</sup>

As noted, search and arrest warrants are crucial to enforcement aimed at mid- and high-level gambling operators. This fact, combined with the difficulty of establishing probable cause for warrants, can result in the falsification of warrant affidavits.<sup>68</sup>

Electronic surveillance and undercover operations both require a relatively substantial commitment of resources, primarily in manpower costs.<sup>69</sup> However, this requirement—an important one in light of the perennial problem of limited resources—must be balanced with the fact that these techniques can be very effective in reaching the high-level gambling offenders who are often immune to other techniques.<sup>70</sup>

Despite the more severe sentencing provisions of syndicated or commercial gambling statutes, judges continue to give minimal sentences in gambling cases.<sup>71</sup> Thus, the anticipated effectiveness of severe sentences has not materialized.

Where witness immunity cannot be used in gambling cases, there is little incentive for a witness to cooperate. This is particularly true of low-level operators or employees who may reasonably expect to be sentenced only to a small fine and/or probation. The sentences provided by syndicated gambling statutes might be expected to help convince higher level persons to testify against their colleagues; however, since the higher maximums appear to have little effect on sentencing practices, this incentive exists in theory only.

TABLE 3-11.—STATES AUTHORIZING THE USE OF IMMUNITY IN GAMBLING CASES, JANUARY 1974

General statute		Specific statute	
Arizona	Indiana	New York	Connecticut
California	Kansas	North Dakota	Kentucky
Colorado	Maine	Oklahoma	Maryland
Delaware	Massachusetts	Oregon	Mississippi
Florida	Michigan	Rhode Island	Montana
Hawaii	Minnesota	South Dakota	Nebraska
Idaho	Nevada	Utah	New Mexico
Iowa	New Hampshire	West Virginia	North Carolina
Illinois	New Jersey	Wisconsin	Ohio
			Pennsylvania
			Virginia
			Washington

Source: National Association of Attorneys General, *Organized Crime Control Legislation*, January 1975, Ch. 9.

## DISPOSITION AND SENTENCING OF GAMBLING OFFENDERS

Of the tens of thousands of persons arrested each year in the United States for gambling offenses, a relatively small proportion are convicted; of those convicted, a very small percentage receive jail or prison sentences or substantial fines.<sup>72</sup> Although comprehensive data do not exist,<sup>73</sup> available examples provide documentation of this pattern in gambling dispositions and sentences.

Records of the Superior Court of the District of Columbia indicate that of cases involving defendants against whom gambling charges were filed in 1973, 48 percent were nolle prossed, no-papered, or dismissed; 43 percent of the defendants in 1973 were convicted.

During 1969, there were 2,096 arrests for felonious gambling in the State of New York, resulting in 281



indictments and 15 convictions. Of 4,720 persons charged with gambling offenses in Philadelphia during 1970, 517 were convicted.<sup>74</sup>

During the 6-year period 1969 to 1974, patrol district officers in the Chicago Police Department arrested 36,207 persons for gambling; 6 percent of those arrested were convicted. During the same period, 12 percent of the 12,976 persons arrested by the department's headquarters Gambling Section were convicted.<sup>75</sup> The Chicago Crime Commission studied a cohort of 122 gambling cases that included all cases transmitted by the Chicago Police Department to the municipal courts during a 2-week period in 1974. In 55 percent of the cases the charges were dismissed; in another 20 percent, the court denied leave to file charges.<sup>76</sup>

There are exceptions to the generally low conviction rates for gambling. Approximately 70 percent of persons appearing in Connecticut Circuit Courts on gambling charges between 1970 and 1974 were convicted. New Jersey, in contrast to most other jurisdictions, treats gambling as a serious offense. This is reflected in dispositions as well as sentences. In a Commission-sponsored study,<sup>77</sup> a sample of persons arrested—primarily for common gambling—by the Newark Police Department was compared to a sample of persons arrested for gambling by the Philadelphia Police Department. Seventy-three percent of the Philadelphia cases were dismissed or discharged, while this occurred in only 4 percent of the Newark cases. Seventy-one percent of the Newark arrests and 6 percent of the Philadelphia arrests resulted in convictions. In the same study a similar pattern of dismissals and convictions was found when samples of more serious gambling cases—primarily involving lotteries—from Newark and Washington, D.C., were compared.<sup>78</sup> Twenty-nine percent of the Newark cases went to trial, compared to 7 percent of the Washington cases. Differences were also found in bail practices and case-processing time. Fifty-six percent of the Washington arrestees and none of the Newark arrestees were released on personal recognizance, and bail amounts were significantly higher in Newark. The average case-processing time—from offense to final disposition—was four times longer in Newark (294 days) than in Washington (67 days).

As noted, jail terms for gambling offenses are rare, and fines are usually nominal. The single exception to this pattern is found in New Jersey, where a substantial number of convicted gambling offenders are sentenced to jail or prison terms.<sup>79</sup> From 1969 through 1974, an average of 184 persons per year were sentenced to State prison terms for gambling offenses. In 1973, 11 percent of persons convicted for gambling in New Jersey were sentenced to prison, and 42 percent were sentenced to jail. In the same year, 9 percent of persons convicted of all offenses in New Jersey were sentenced to prison, and 13 percent were sentenced to jail. In the Commission-sponsored Newark study, 88 percent of convicted gamblers in the sample of cases from the county prosecutor's office were sentenced to jail or prison terms.

In other jurisdictions, suspended sentences, probation, or small fines are the usual sentence for gambling convictions. In California in 1973, of the 333 persons convicted of bookmaking—a felony in California—none were sentenced to prison, 10.2 percent were sentenced to jail, and 78.9 percent were placed on probation. Of those convicted of all felonies in California in 1973, 59 percent were given jail or prison sentences.

Fewer than 3 percent of the persons convicted of gambling in Washington, D.C., in 1973 were given jail terms; another 11 percent were sentenced to jail or a fine; and 55 percent were either given a suspended sentence or placed on probation.<sup>80</sup> Of 517 persons convicted of gambling in Philadelphia in 1970, 5 were sentenced to jail. In Detroit in 1974, 262 persons were convicted of gambling conspiracy; none were jailed. In the gambling cases studied by the Chicago Crime Commission, fines were usually \$100 or less.

There are several reasons for judges' apparent reluctance to give more severe sentences to gambling offenders. Jail sentences or substantial fines might be expected where a gambling operation is shown to be associated with organized crime. It appears that such a connection is rarely established for gambling offenders. Two Detroit judges testifying before the National Gambling Commission discussed this issue.<sup>81</sup> Judge Robert Columbo said that the defendants who appeared before him were not known gamblers and were not involved in organized crime. Judge Vincent Brennan questioned whether small-time, non-mob-controlled bookmakers should be jailed. Several Allegheny County (Pittsburgh) judges interviewed by the Pennsylvania Crime Commission agreed that a sentence must primarily reflect the characteristics pertinent to the individual and to the circumstances surrounding the offense, and cannot be made on the basis of a general societal goal of cutting off the flow of revenue to organized crime.<sup>82</sup>

Characteristics of gambling offenders, apart from organized crime considerations, affect the sentences they receive. The Allegheny County Court judges stated that gambling offenders in that court were often housewives, unemployed war veterans, senior citizens, or handicapped or disabled persons. Almost all were from the lower economic strata, and many were living on Social Security or pensions.

Most of the gambling cases that come before judges are of a relatively nonserious nature. Judges in Allegheny County cited a lack of concerted and systematic efforts by police and prosecutors to reach upper level personnel in gambling operations as a chief reason for the light sentences imposed on a majority of offenders. And, like police and prosecutors, judges are affected by the fact that gambling is less serious than some other offenses that must be dealt with daily. Where this combines with a tolerant community attitude toward gambling, judges may find it difficult to justify harsh sentences.

Finally, the existence of legal games affects sentencing decisions in gambling cases. Judge Edward Bell testified that the "State should not run a legal lottery" and at the same time impose "criminal sanctions against illegal

numbers."<sup>83</sup> Judge Brennan and several Allegheny County judges questioned the fairness of punishing one person for

actions very much like those connected with legal gambling operations.

## CITIZEN ATTITUDES TOWARD GAMBLING ENFORCEMENT

It is commonly thought by police and other criminal justice personnel that little public support exists for enforcement of antigambling laws. Inasmuch as police effectiveness depends in part on citizen support, this belief has consequences for gambling enforcement. In formulating gambling enforcement policies it is therefore important to determine the extent to which citizens are willing to assist police gambling enforcement efforts. A related policy question is whether or not citizens are satisfied with existing gambling enforcement efforts. To answer these and other questions, the Commission's national survey asked citizens about their views toward gambling enforcement.<sup>84</sup>

### Citizen Support

To determine the level of citizen support for gambling enforcement, three questions were asked: (1) How important to you is it that gambling laws are strictly enforced? (2) Should people who are known to take illegal bets be arrested? (3) If they are arrested do you think they should go to jail? From the responses to these questions, it is apparent that there is significant citizen support for gambling enforcement. Forty-two percent said it is "very important" to enforce gambling laws; 74 percent said that persons who take illegal bets should be arrested; and 55 percent said that persons convicted of taking illegal bets should go to jail.<sup>85</sup>

Thirty percent of the citizens surveyed agreed with all three; enforcement is very important, persons taking bets should be arrested, and they should be jailed. This group was designated as having a "high" level of support for gambling enforcement. Of the remaining respondents, 33 percent had "medium" support and 37 percent had "low" support for gambling enforcement. The highest support for gambling enforcement was found among those citizens who believe there should be laws against plaintiffless crimes and who had not gambled in the past year.

More support for enforcement was found among citizens living in States with no legal gambling (31 percent) than among those living in States where off-track betting is legal (21 percent). Support among rural residents was slightly higher than that among central city or suburban residents. Citizens were asked questions regarding the extent of organized crime involvement in illegal gambling. Eighty-seven percent thought that profits from illegal gambling are used for drugs and loan-sharking operations while only 26 percent agreed that very few illegal gambling operations are run by organized crime. However, perceptions of organized crime involvement were not found to influence the level of support for gambling enforcement.<sup>86</sup>

While 76 percent of the survey respondents said gambling enforcement was either "fairly important" or "very important," the priority of gambling enforcement was low relative to nine other offenses (table 3-12). The low enforcement priority of gambling compared to such offenses as selling heroin, burglary, or car theft is not unexpected. It is somewhat surprising, however, that only one-fifth of the citizens interviewed thought gambling enforcement was more important than enforcement against public drunkenness, prostitution, and pornography.<sup>87</sup>

### Citizen Assistance

Citizens were asked about their willingness to report a gambling violation: If you were certain that you knew of someone who was in the business of taking illegal sports bets, do you think you would probably report it to the police or not? Thirty percent answered "yes." When asked whether they would report other types of offenses, a majority of citizens—ranging from a low of 63.8 percent for selling marihuana to a high of 97.3 percent for robbery—said they would.

TABLE 3-12.—ENFORCEMENT PRIORITY

Offense	Percent answering		
	"More important"	"Equally important"	"Less important"
Selling heroin	90.1	9.1	0.7
Drunk driving	87.1	11.6	1.3
Burglary	83.2	15.1	1.8
Car theft	80.5	16.8	2.6
Buying stolen property	74.6	20.1	5.3
Sale of marihuana	71.0	16.8	12.2
Public drunkenness	56.2	24.5	19.3
Prostitution	55.0	26.3	18.8
Pornography	51.2	27.9	21.0

The factors that are most closely associated with a willingness to report sports bookmaking to police were a high level of support for gambling enforcement and a belief that police will act on a citizen complaint. Sixty-four percent of citizens with high support for gambling enforcement said they would report; and 94 percent of those who thought police would act said they would report.

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## Citizen Satisfaction

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Citizens were asked whether they thought police should do more than, less than, or the same as they are doing now to enforce laws against illegal gambling. Thirty-nine percent said they wanted more enforcement, 6 percent said they wanted less, and 55 percent said they wanted the same. For the purpose of analysis the respondents were categorized as "satisfied" (persons who wanted the same or less) or "dissatisfied" (persons who wanted more) with current gambling enforcement efforts.

Citizens with high support for gambling enforcement

tended to be dissatisfied with current efforts. Citizens' perceptions of the amount of numbers and of police corruption also influenced their satisfaction with enforcement, with the perception of greater amounts of numbers and of police corruption resulting in a greater tendency toward dissatisfaction.

Citizens' satisfaction or dissatisfaction with gambling enforcement had some influence on how they rated overall police performance. Citizens who were satisfied with gambling enforcement were more likely to rate the job police do as "good," "very good," or "excellent" (78 percent) than were citizens who were dissatisfied (60 percent).<sup>88</sup>

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## CONCLUSIONS AND RECOMMENDATIONS

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Current efforts by the criminal justice system to enforce gambling prohibitions are too often characterized by inconsistencies, inefficiency, and ineffectiveness. Solutions are elusive because it is not possible to isolate a single cause of the problems. The Commission believes, however, that significant improvement is possible and that such improvement will require the efforts of both State legislatures and the various agencies of the criminal justice system.

Different jurisdictions experience different kinds of problems in gambling enforcement. Numbers and sports betting are the predominant forms of illegal betting in most major Eastern cities; in large Western cities there is considerable illegal bookmaking but little or no numbers play. Illegal gambling in any form has traditionally been less of a problem in most smaller cities. Citizen support for gambling enforcement varies by size of jurisdiction. Many of the Commission's recommendations, therefore, vary in their applicability. It is the responsibility of the officials and citizens of each State and local jurisdiction to assess the quality of gambling enforcement and, where it is found lacking, to implement appropriate changes.

Many of the Commission's recommendations are relevant to areas beyond gambling. This is particularly true of enforcement against organized crime. The Commission's mandate, however, is limited to gambling; therefore, discussion of the broader applications is left to State and local jurisdictions.

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## Gambling Policy Decisions

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Current gambling policy at the State level accurately reflects the ambivalence and contradiction that have traditionally characterized this Nation's approach to the problem of gambling. The States often have found it difficult to formulate reasonable and consistent gambling policy and law. Over the years, two strong, conflicting sentiments have surfaced: that gambling is a morally and socially destructive activity that must be suppressed, and that the enormous popularity of gambling makes it a

suitable activity for governments to channel into useful and productive ends through licensing and taxation. The history of gambling policy in the United States has been a constant tug of war between these two philosophies, in which each side appears to gain the advantage for a certain period and then begins to lose ground. Also underlying the passage of antigambling laws has been the desire to fight organized crime, to maintain public order, or to preserve the work ethic. In the current era of economic distress combined with increasing tolerance of once-proscribed activities, the lure of legal gambling revenues has prompted a number of States to reexamine their gambling policies with a view toward legalization.

Several States have for many years permitted betting at racetracks; more recently, off-track betting has become legal in some jurisdictions. Yet taking bets on horses anywhere except at a track or at an official off-track location is subject to criminal prosecution. Charitable organizations are widely exempted from gambling prohibitions in order that they may sponsor raffles or bingo; similar endeavors of a commercial nature are prohibited. State-run lotteries and numbers games have been instituted, but these same forms of gambling are prohibited if privately run.

Many States are presently attempting to promote and suppress gambling at the same time. While there is nothing inherently wrong with this type of dualistic approach, since gambling is not one but many different activities, there is evidence that neither the legal gambling operations nor the attempts at suppression are achieving their stated objectives. (For a discussion of the objectives and policy decisions regarding legal gambling, see chapter 4 of this Report.) There is some evidence that the existence of gambling sanctioned, licensed, or run by the various States—and the attendant publicity—tends to increase citizen participation in illegal as well as legal gambling.

While State legislators have been quick to prohibit certain forms of gambling, they have generally been less willing to provide the tools necessary to enforce such prohibitions. As a result, law enforcement agencies are faced with an impossible task. In many jurisdictions, the deterrent effect of antigambling laws is weakened by the

fact that the illegality of gambling is restricted to persons who take bets, while those who make bets are not violating the law in doing so. A majority of States have failed to authorize electronic surveillance—a tool widely accepted as necessary to enforce gambling laws effectively. Similarly, only a few States have instituted investigative grand juries with either statewide or local jurisdiction.

The lack of commitment to enforcement of gambling prohibitions is also reflected in the level of resources devoted to that purpose. Legislative bodies are increasingly reluctant to expand criminal justice appropriations in general; but even in past years when budget increases were more available to criminal justice agencies, little if any effort was made to provide the resources required for a serious gambling enforcement effort. Legislators appear to have considered their task complete upon enactment of antigambling laws, without considering that successful enforcement would likely require additional police, prosecutors, and judges.

A number of States have provided for increased penalties for convicted gambling offenders. However, this appears to have been done without consideration of relevant questions: If judges have rarely made use of the lower maximum sentences previously available to them, are they likely to sentence gambling offenders more severely now? If so, will this result in a greater number of trials, necessitating additional prosecutors, judges, and courtrooms? If sentences do increase in severity, can any significant number of gambling offenders be housed in existing jails, or will new ones be needed?

States also have not established priorities among the sometimes contradictory goals of gambling prohibition: organized crime control, minimization of corruption, preservation of a public image of integrity for police departments, maintenance of public order, and proper use of resources.

Most of the recent official attention given to gambling has centered around the question of whether or not to legalize various games. It is clear that equal attention must be given to the role of gambling prohibitions. A continuation of the current “patchwork” policies can only mean a continuation of contradictory goals and of problems in enforcing gambling prohibitions. Clearly, States must debate and decide the goals of gambling prohibitions and must consider the available and necessary strategies for achieving those goals.

While State legislators bear most of the responsibility for the current lack of consistent gambling policies, criminal justice agencies must assume their share of the blame. Police, prosecutors, and judges alike have been ostrichlike in their failure to communicate with each other or with State legislatures concerning the problems of enforcing gambling prohibitions. The prevailing attitude seems to be that each criminal justice agency can perform its function while remaining oblivious to what occurs in the rest of the system, and that it is inappropriate to “interfere” in the legislative process.

The Commission believes the contrary to be true. **The policy decisions of criminal justice agencies that affect gambling enforcement must be made cooperatively.**

**Further, criminal justice officials have a responsibility to make their views known to legislative bodies, and this responsibility must be met in the area of gambling policy.**

The view that the criminal justice system ought to work cooperatively is not a new one. However, practices reflecting this view remain the exception rather than the rule.

In addition to, or in the absence of, legislative policy changes, the Commission believes that changes—some legislative, some directed at agency policies and procedures—can be made that will substantially lessen the current problems of gambling enforcement.

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## Police

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**The Commission recommends that concurrent State-county-local jurisdiction in the investigation and prosecution of gambling be instituted so that State and/or county responsibility in the enforcement effort against high-level gambling offenders—particularly bookmakers and numbers operators—may be increased.** Where serious and large-scale illegal gambling exists, the effort to combat it must be centralized and specialized in order to be effective. The mounting of such an effort in each local police department within a State or metropolitan area is an inefficient use of resources. Although police in smaller jurisdictions generally have a less serious gambling problem, they also have fewer resources available for gambling enforcement. Thus, an increased effort at the county or State level can be of particular use to small police departments. And although large-city departments have greater resources available, the fact that most illegal gambling, as well as violent and property crimes, are concentrated in urban areas places a strain on those resources.

An increased Federal role in gambling enforcement has benefited the efforts against interstate gambling operations. However, the fact that many, if not most, illegal gambling operations also cross intrastate jurisdictional lines has often been a hindrance to local police. The Commission believes this problem can be alleviated by an increased gambling enforcement role for State and county authorities.

Within local police departments, specialization in gambling enforcement is desirable. Responsibility spread among all patrol officers or all vice squad members weakens the gambling enforcement effort. Patrol officers, because of their uniforms and their regular duties, can make only low-level gambling arrests. Assigning vice officers multiple responsibilities decreases the likelihood that the necessary expertise and sophistication in gambling enforcement will be developed. **Therefore, for those police departments of sufficient size to support structural specialization, and where the amount and nature of illegal gambling warrants it, the Commission recommends the establishment of specialized gambling enforcement units. In departments where such a unit is not feasible, the Commission recommends that one or more officers be given the assignment of directing the gambling**

**enforcement effort.** The Commission recognizes that where there are specialized gambling units, there is a potential for corruption. This potential, however, is not limited to specialized units, but exists in any kind of gambling enforcement structure. In any event, police departments have a continuing responsibility to institute and maintain measures to prevent and control corruption.

Regardless of the enforcement role of State or county agencies, enforcement against nonserious gambling violators should remain the responsibility of local police. The status of enforcement aimed at low-level offenders is of particular concern to the Commission. Arrests of nonserious gambling violators have too long constituted the major portion of the gambling enforcement effort, despite the fact that such arrests cannot make any significant contribution to organized crime control. The proper—and achievable—objectives of enforcement against low-level gambling violators are minimization of corruption, preservation of a public image of integrity for police departments, maintenance of public order, and the proper use of criminal justice resources. **The Commission recommends that the major enforcement effort be directed at large-scale organized gambling, and that enforcement against less serious gambling offenses—such as social gambling in public and public activity by low-level employees of gambling organizations—be aimed at accomplishing the above objectives.**

Enforcement directed at low-level gambling employees and persons engaging in social gambling in public places must be sufficient to meet the public's expectation that obvious violations of the law will be dealt with and to discourage illegal gambling operations from open promotion. Police department policies that result in the wholesale arrest of such offenders should be avoided; inundating prosecutors and courts with these cases is a misuse of resources and has no impact on illegal gambling. **Gambling arrest quotas, official or informal, should not be established; at the same time, policies such as requiring elaborate paperwork that discourage officers from making gambling arrests should not be established.**

The Commission has considered recommending the issuance of low-collateral citations for public social gambling, thereby eliminating the waste of resources entailed in the current formal processing of these offenders without changing the nature of the penalty ultimately assessed. Use of citations for crimes that do not have plaintiffs is not a new concept; a number of States have instituted such a system for marijuana consumption offenses.

Ultimately the Commission has had to reject this approach, having been persuaded that voluntary compliance with this scheme would be extremely low, both promoting disrespect for the law and requiring substantial followup effort to enforce payment.

The major reason for continuing the criminal status of social gambling in public settings is the belief that such gambling is likely to lead to disturbances of the public order. However, the laws prohibiting public social gambling account for a major proportion of gambling arrests of blacks, making it apparent that such laws are

discriminatory in effect, though not in intent. **The Commission believes that serious consideration should be given to removing statutory prohibitions against public social gambling.**

Numbers writing or other activity by low-level employees of gambling organizations occurring in public places is a somewhat different matter. Although the Commission has recommended that the major investigative responsibility be vested in a particular agency or unit, the patrolling police officer still has the responsibility to take action where he observes an open gambling violation. **Such offenses should be processed as minor criminal offenses.**

Although corruption related to gambling enforcement is a problem that has manifested itself primarily in large Eastern police departments, no department should consider itself immune. Implementation of the Commission's recommendations concerning specialization and emphasis on enforcement against high-level offenders should contribute to the prevention of corruption in gambling enforcement. The Commission believes, however, that administrators, through their attitudes and statements, play a most important role in the prevention and control of corruption. It must therefore be made clear by police chiefs and other administrators that misconduct will not be tolerated. And the tradition of "reacting" to corruption must continue to be replaced by preventive measures.

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## Prosecutors

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The role of prosecutors in gambling enforcement is an important one. The apparent reluctance of prosecutors' offices to take gambling cases seriously has been a source of discouragement to police and a factor in the ineffectiveness of gambling enforcement.

The basis for prosecutorial attitudes is not hard to find. Gambling cases can be long and technical; in many offices, the expertise to try these cases competently is lacking. A continual flow of low-level gambling cases from police has tended to overshadow cases involving serious gambling offenders. In addition, the prosecutor, like the police officer, must be discouraged by the very light sentences given to convicted gambling offenders.

The Commission's recommendations to police agencies should insure that prosecutors receive a greater proportion of serious gambling cases and a lesser number of low-level ones. While this alone will provide some incentive to prosecutors to treat major gambling cases seriously, greater expertise and more direct involvement by prosecutorial agencies are needed as well.

Gambling, particularly at the higher levels, is a sophisticated business. To prosecute major gambling figures successfully, prosecutors must have more than courtroom know-how; they must understand how bookmaking and numbers operations work, and they must be knowledgeable about the use of electronic surveillance, grand juries, immunity, and contempt citations as tools against gamblers. The seminar or conference model is of

limited usefulness in raising prosecutorial expertise in gambling cases to the level needed. **The Commission therefore, recommends that law schools and professional associations (e.g., National Association of Attorneys General and the National Association of District Attorneys) provide comprehensive postgraduate training in the prosecution of gambling cases.**

Rigid separation of the prosecutorial and investigative functions is a hindrance to successful gambling enforcement. The likelihood of success in gambling prosecutions will be increased where prosecutors specify to police agencies the elements required for a gambling case to receive a serious prosecutorial effort, consult with and advise police during the investigative phase of major gambling cases, and assign an appropriate number of assistant prosecutors to handle gambling cases. **The Commission endorses the strike force concept, whereby police and prosecutors work cooperatively throughout the investigation and prosecution of gambling cases.** In some jurisdictions the appropriate vehicle for such cooperation will be the establishment of a strike force or a joint investigative-prosecutive unit. Other jurisdictions may wish to implement mutual police-prosecutor involvement without creating a formal structure.

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## Electronic Surveillance

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The basis of enforcement against major gambling operations, particularly bookmaking, must be electronic surveillance. Without this tool, it appears that law enforcement efforts will never reach beyond the lower levels of operation such as the numbers writer and the bookie's telephone clerk.

This is apparent for three reasons: the heavy and unavoidable reliance of the bookmaking profession on telephones for routine transactions; the lack of witnesses who might provide independent evidence; and the fact that wiretap authority becomes essential when, because the lower level arrestees see themselves running small risk of incarceration, they will provide little information to aid in the conviction of major operatives.

Gambling wiretaps have seldom been used in States outside of New Jersey and New York; thus it is difficult to provide a detailed evaluation of State use of this tool. In some instances, gambling wiretaps have resulted in the prosecution and conviction of high-level gambling figures associated with organized crime. At the same time, there is evidence that electronic surveillance has also been used to investigate low-level gambling activity.<sup>89</sup> Nevertheless, over half the people convicted in State gambling cases in which wiretapping is used are sentenced to incarceration.<sup>90</sup>

It is the Commission's view that wiretapping in gambling cases, when properly used, can provide local law enforcement agencies with a highly productive means of obtaining convictions and jail terms for high-level members

of gambling operations. It is unlikely that this can be accomplished without electronic surveillance. **The Commission therefore recommends the continued use of electronic surveillance in major gambling cases. In those States having a substantial amount of illegal gambling and where electronic surveillance is not now authorized, the Commission recommends the passage of legislation authorizing the use of electronic surveillance in gambling cases.**

It is of the utmost importance that where electronic surveillance is used, the rights and privacy of citizens be safeguarded.<sup>91</sup> The Commission's recommendation that police and prosecutors work cooperatively on gambling cases has special application in electronic surveillance cases inasmuch as prosecutors' monitoring of wiretaps is central to insuring that they are properly conducted.

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## Sentencing

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In almost every State in the Nation, convicted gambling offenders are subject to either moderate fines or sentences of probation. Only in New Jersey does the convicted gambler face a serious threat of significant periods of incarceration. The result is that, outside of New Jersey, the police lose one of their major tools for enforcement—the threat of a substantial penalty.

The Commission is aware that there is widespread disagreement as to the seriousness of gambling violations per se. In a system where convicted muggers often receive sentences averaging no more than a few months in jail, it is difficult to exhort judges to subject all convicted gambling operators to lengthy sentences indiscriminately.

Nonetheless, it should be noted that a strong majority of the citizens surveyed by the Commission agreed that gambling violators should be jailed. In many cities, there is widespread support for the notion that organized crime poses a serious threat and that illegal gambling is an important part of its activity. Judges who decide to impose substantial sentences on major gambling violators will find strong support for their actions.

It is clear that many judges fear that imposition of heavy sentences in routine gambling cases exposes them to the risk of many protracted trials. In New Jersey, however, where judges have followed such a sentencing policy for the past decade, excessive crowding of the court calendar does not appear to be a problem. Moreover, what the Commission is recommending to police and prosecutors is likely to lead to the presentation of fewer and more serious gambling cases in court.

It appears that the information available to judges in the sentencing of gambling offenders is often inadequate. Presentence reports are not routinely requested and prosecutors often fail to present information concerning a defendant's organized crime connections. If major gambling offenders are to receive serious sentences, courts must have sufficient information at the time of sentencing

to determine the appropriate penalty. **The Commission therefore recommends an increased use of presentence reports in gambling cases.** The sentence should take into account both the prior record of the offender and any evidence presented at the sentencing hearing that concerns

organized crime activities. **Where it can be shown that the offender is a major gambling figure and is involved in organized crime, a significant jail term together with a substantial fine should be given. For lesser offenders, a substantial fine alone is appropriate.**



# FOOTNOTES

<sup>1</sup> *Crime in the United States, 1974*, Uniform Crime Reporting Section, Federal Bureau of Investigation, U.S. Department of Justice, table 29, page 181. The total of 61,900 gambling arrests is projected from 45,900 actual arrests reported by law enforcement agencies covering approximately 75 percent of the U.S. population.

<sup>2</sup> During the same 14-year period, the only areas in which arrests declined are: sex offenses, 14.2 percent; offenses against family and children, 45.1 percent; drunkenness, 43.4 percent; vagrancy, 77.7 percent; and suspicion of a crime, 76.2 percent. Much of the decline in drunkenness arrests is due to decriminalization of public drunkenness. Much of the decline in arrests for vagrancy and suspicion has resulted from court decisions declaring unconstitutional the statutes under which many of these arrests were made.

<sup>3</sup> It is probable that jurisdictional variations in gambling laws result in some inconsistencies in the classification of gambling arrests by game.

<sup>4</sup> Of course, not all bookmaking and numbers/lottery arrests are of a serious nature, but generally "all other gambling" arrests tend to be less serious than those in the other two categories.

<sup>5</sup> Prior to revision of the gambling statutes in 1973, persons in Connecticut were arrested and charged with such offenses as "betting on a horserace" and "policy playing." The latter, in fact, accounted for approximately 20 percent of gambling arrests between 1969 and 1971. In contrast, no arrests have ever been made under the District of Columbia statute that prohibits betting in a gambling pool or with a bookmaker.

<sup>6</sup> Interpretation of these and other statistics regarding arrests by population group are rendered difficult by several characteristics of Uniform Crime Reports. Arrests classified as "suburban" include those made by suburban, city, and county police agencies within metropolitan areas. Suburban arrests are also counted in city arrest totals. County arrests are those which occur in the county and outside of city limits. UCR population group definitions are different from those used by the U.S. Census Bureau, making it difficult to determine whether or not that portion of the population covered by UCR accurately reflects total U.S. population groups.

<sup>7</sup> This is difficult to measure precisely because the rate per 100,000 declined by just over 50 percent, while the percentage of all gambling arrests rose from 1 percent to 2 percent between 1969 and 1974 (table 3-3).

<sup>8</sup> In this table, it should be noted that the percent of all gambling arrests is a less reliable indicator of changes than the arrest rate, since changes in proportion may reflect the movement of the population rather than actual changes in gambling arrests. (Note: Percentages do not add up to 100 percent because of overlapping population group definitions.)

<sup>9</sup> Source: Prosecutor's Management Information System (PROMIS), Institute for Law and Social Research, Washington, D.C.

<sup>10</sup> Hereinafter cited as the IACP survey. Police departments in cities with a population of 25,000 or more were surveyed for the National Gambling Commission by the International Association of Chiefs of Police (IACP). The original sample included 587 city police departments and State law enforcement agencies. (Responses of State agencies are not used in this chapter because of the small number responding.) Of the city police departments, 298 responded, for an overall response rate of 55 percent. The number of departments participating in the survey by city size was: 250,000 and over—40; 100,000 to 250,000—73; 50,000 to 100,000—65; and 25,000 to 50,000—120. Respondents, who included both chiefs of police and officers experienced in gambling enforcement, were asked about the gambling enforcement policies and practices of their departments and about their own attitudes toward gambling enforcement. The survey data were analyzed by the Survey Research Program, University of Massachusetts (Pratter, et al.). For their report, see the appendix to this Report.

<sup>11</sup> See "An Analysis of the Characteristics of Arrested Gamblers in the State of New Jersey" and "The Effect of Increased Enforcement of Gambling Laws" (Riedel and Thornberry) in the appendix to this Report.

<sup>12</sup> Pennsylvania Crime Commission, *Patterns of Sentencing in Allegheny County Gambling Cases* (Harrisburg: Commission), 1974, pp. 27 and 41.

<sup>13</sup> For the purpose of the IACP questionnaire, organized crime was defined as "the unlawful activities of the members of a highly organized, disciplined association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution,

loansharking, narcotics, labor racketeering, and other unlawful activities of members of such organizations."

<sup>14</sup> Testimony of Robert J. diGrazia before the National Gambling Commission, Boston, Massachusetts, April 10, 1975.

<sup>15</sup> Testimony of Lieutenant Edward Berry, Commanding Officer, Gambling Section, and Commander Michael J. O'Donnell, Vice Control Division, Chicago Police Department, before the National Gambling Commission, Chicago, Illinois, September 24, 1975.

<sup>16</sup> Kretz, James. *Police Perception of Plaintiffless Crime: Preliminary Report of a Survey of the District of Columbia Metropolitan Police Department*, Washington, D.C.: Bureau of Social Science Research, Inc., July 1973.

<sup>17</sup> Hereinafter cited as the FOP survey. In August 1975, the National Gambling Commission surveyed delegates to the national conference of the Fraternal Order of Police (FOP). The delegates, 1 for every 50 FOP members, were selected locally by popular vote and numbered 1,803. Fifty-seven percent (1,021) of the delegates participated in the survey.

<sup>18</sup> Hereinafter cited as the Commission's citizen survey or the national survey. See chapter 4 of this Report for a description of the survey's methodology. The survey included a series of questions about citizen attitudes toward gambling enforcement. The results of that section were analyzed by the Survey Research Program, University of Massachusetts (Mangione, et al.). For their report, see the appendix. See also the section of this chapter entitled Citizen Attitudes Toward Gambling Enforcement.

<sup>19</sup> See the section of this chapter entitled "Disposition and Sentencing of Gambling Offenders." See also *State and Local Gambling Enforcement Statistics* (Duncan), appendix to Report.

<sup>20</sup> See Jonathan Rubinstein, *Gambling Enforcement and Police Corruption*; Carol H. Duncan, *Gambling-Related Corruption*; appendixes to Report.

<sup>21</sup> New York Commission to Investigate Allegations of Police Corruption and the City's Anticorruption Procedures (Knapp Commission) *Commission Report* (New York: Commission, 1972); Pennsylvania Crime Commission *Report on Police Corruption and the Quality of Law Enforcement in Philadelphia* (St. Davids: Crime Commission, 1974).

<sup>22</sup> Pennsylvania Crime Commission, *Report on Police Corruption*, p. 168. The Crime Commission states that "evidence of payments was obtained through sworn testimony of gamblers and police officers, tape recorded conversations with gamblers and police officers, and direct observations of payoffs." Walter M. Phillips, Jr., State Special Prosecutor for Philadelphia, testifying before the National Gambling Commission on May 28, 1975, said that investigations conducted by his office during the year following the Crime Commission report had led him and his staff to agree with that commission's findings regarding gambling corruption. Police Commissioner Joseph F. O'Neill, however, strongly disagrees with the conclusions of the Crime Commission and Mr. Phillips. In response to the allegation that gambling is "open and widespread," Commissioner O'Neill said, "I defy anybody in this room to go out as a stranger and find a bookmaker that will take their bet or find a numbers writer that will take a number for you." (Testimony before the National Gambling Commission, Philadelphia, May 29, 1976.) In correspondence with the National Gambling Commission, Commissioner O'Neill called the characterization of gambling corruption as widespread and systematic "patently false and not supported by fact," and noted that the investigative efforts of outside agencies during the past 5 years have resulted in the conviction of only one police officer for gambling-related corruption. (Letter to James E. Ritchie, August 4, 1976.)

<sup>23</sup> See Annual Reports of Pennsylvania Crime Commission and New York State Commission of Investigation; James F. Ahern, *Police in Trouble* (New York: Hawthorne Books, Inc., 1972). New York and Pennsylvania have very active State-level investigative commissions, thus examples of gambling corruption in those States are well-documented. Police corruption generally also appears to affect small law enforcement agencies. Newspaper clippings collected from 30 States for a 2-month period in 1973 by the Police Foundation alleged corruption in small cities, sheriffs' offices, State police forces, and suburban police departments. See Herman Goldstein, *Police Corruption* (Washington, D.C.: Police Foundation, 1975).

<sup>24</sup> Many writers have characterized gambling corruption as one step in progressively more serious police corruption. See, for example, James F. Ahern, *Police in Trouble*; Thomas Barker and Julian



Roebuck, *An Empirical Typology of Police Corruption* (Springfield: Charles C. Thomas, Publisher, 1973); Robert H. Williams, *Vice Squad* (New York: Thomas Y. Crowell Co., 1973).

<sup>25</sup> Goldstein, *Police Corruption*, p. 10.

<sup>26</sup> See, for example, John Gardiner, *The Politics of Corruption: Organized Crime in an American City* (New York: Russell Sage Foundation, 1970).

<sup>27</sup> See Duncan, *Gambling-Related Corruption*, appendix to Report.

<sup>28</sup> In fact, one police method of extracting payments from gamblers is to seize records and then sell them back to the gamblers.

<sup>29</sup> A sample of Fraternal Order of Police members was surveyed by the National Gambling Commission in 1975. (See footnote 17.) More than 80 percent agreed with the statement "the general public does not care if the law against various forms of gambling is enforced." Although the Commission's national survey found significant citizen support for gambling enforcement, the priority of such enforcement was low relative to other offenses.

<sup>30</sup> In the FOP survey (footnote 17), a substantial majority of respondents agreed that prosecutors would rather not be bothered with gambling cases, and that judges usually give light fines and/or suspended sentences in gambling cases. A substantial majority disagreed with the statement that defendants in gambling cases are usually found guilty.

<sup>31</sup> The Knapp Commission (p. 7) called the "rotten apple" theory a "basic obstacle to meaningful reform."

<sup>32</sup> Goldstein, *Police Corruption*, p. 11.

<sup>33</sup> For a detailed description of New York's past and present corruption control measures, see Allan N. Kornblum, *The Moral Hazards* (Lexington: D. C. Heath and Company, 1976).

<sup>34</sup> In 1975, the American Academy for Professional Law Enforcement sponsored a corruption conference which was attended by chiefs of police and internal affairs officers as well as academicians. A similar conference, sponsored by John Jay College of Criminal Justice, was held in 1976. Gatherings of this nature have only recently begun to be held.

<sup>35</sup> The Field Associates Program and "turnarounds" have caused resentment among New York police officers. Kornblum (*The Moral Hazards*) criticizes these techniques on the grounds that they work by creating fear, changing behavior and not attitudes, and therefore are not appropriate for long-term use.

<sup>36</sup> In Miami, Fla., for instance, most gambling arrests are made by the Dade County Sheriff's Office.

<sup>37</sup> Washington, D.C.'s Metropolitan Police Department maintains gambling-only units at both the headquarters and patrol district levels. The Boston Police Department's central vice squad devotes about half of its resources to gambling enforcement, both initiating investigations and responding to patrol district requests for specialized assistance.

<sup>38</sup> One such organization is the City-County Strike Force operated by the Essex County, N. J., Prosecutor's Office and staffed by police officers from Newark, East Orange and other Essex County jurisdictions. In the Detroit area, personnel from the Detroit Police Department, the Wayne County Sheriff's Office, the Wayne County Prosecutor's Office, the Criminal Justice Institute, and the Michigan State Police staff the Wayne County Organized Crime Task Force.

<sup>39</sup> Where uniformed patrol officers play a significant role in gambling enforcement, a large proportion of relatively nonserious, on-view arrests may be expected. The uniform prevents detection of all but the most obvious illegal gambling activity (e.g., crap games in an alley or doorway or a numbers writer calling in work from a public phone booth) and patrol officers cannot neglect their regular duties to pursue a gambling investigation.

<sup>40</sup> For instance, regulations of the New York City Police Department require that patrol officers report suspected illegal gambling activity for followup by plainclothes officers.

<sup>41</sup> The appendix to this Report contains gambling enforcement training data for departments responding to the IACP survey.

<sup>42</sup> Organized crime has been only one of several areas under study by most such commissions—for instance, the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey. Legislative recommendations made by these groups, as well as by organized crime prevention councils, and subsequent legislative changes are indicative of increasing State interest in gambling and other organized crime activity. See the *Gambling Enforcement Techniques and Tools* section of this chapter.

<sup>43</sup> Much of the impetus for increasing State interest in organized crime during this period came from the 1968 Report of the Task Force on Organized Crime of the President's Commission on Law Enforcement and Administration of Justice, and from broadened Federal powers in organized crime prosecution granted by Title III of the Omnibus Crime Control Act of 1968 and by the Organized Crime Control Act of 1970.

<sup>44</sup> Funding by the Law Enforcement Assistance Administration to States for the prevention and control of organized crime increased from \$1.4 million in fiscal year 1969 to more than \$20 million in fiscal year 1971.

<sup>45</sup> Organized Crime Programs Division, Office of Law Enforcement Programs, Law Enforcement Assistance Administration, U.S. Department of Justice, *The Role of State Organized Crime Prevention Councils*.

<sup>46</sup> In 1971, for example, 174 of Rhode Island's more than 300 gambling arrests resulted from the activity of these units.

<sup>47</sup> As of June 1975. Some new groups may have been created since that time. See *Organized Crime Control Units* (referenced in table 3-8) for the formal names of the State organized-crime control units.

<sup>48</sup> The agencies included the FBI, IRS, Bureau of Alcohol, Tobacco and Firearms (ATF), neighboring police departments, county sheriff's offices, and State police.

<sup>49</sup> Respondents were asked to indicate the nature of their department's relationship with various other agencies on a 5-point scale, in which 1 = "no regular contracts, joint operations only as needed," and 5 = "formal, regular contracts for coordinating intelligence and investigative effort." When asked about the FBI, the average response for departments in cities with a population of 250,000 or more was 3.5 (the highest average score for any agency); for departments in cities with a population of between 25,000 and 100,000, the average response for the FBI query was 2.1.

<sup>50</sup> For example: prostitution, narcotics, consensual homosexual activity, and pornography.

<sup>51</sup> Exceptions to this occur when police observe such crimes in progress and take action, or when crimes take place but are not reported. It is clear, however, that incidents which cause a person to view himself as a "victim" are much more likely to be reported than those which do not. With the latter, police have the added task of finding violations.

<sup>52</sup> This is particularly true of numbers operations. (See chapter 6.)

<sup>53</sup> Theoretically, the number of bets taken or the number of persons engaged in illegal gambling could be counted. The point here, however, is that gambling is a continuing "service" rather than a series of separate violations.

<sup>54</sup> Prior to the 1968 legislation placing electronic surveillance under Federal regulation, wiretapping was authorized and used in several States.

<sup>55</sup> This is particularly true of bookmaking operations. Numbers operations are less dependent on telephones; however, both wiretapping and bugging can effectively be used to reach upper echelon numbers figures who cannot be reached through other investigative procedures.

<sup>56</sup> Of the 1,971 electronic surveillance orders approved for use in gambling investigations from 1969-1975, 77.1 percent were in New York (37.2 percent) and New Jersey (39.9 percent).

<sup>57</sup> Records such as those required by Title III are not maintained for pen registers. The Report of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance (pp. 17 and 18) discusses pen registers and recommends that the law regarding their use be clarified. Due to the legal uncertainty surrounding the use of pen registers, phone companies deny police the use of leased lines when these devices are installed. Thus pen registers must be monitored in the field rather than from a central police location.

<sup>58</sup> The genesis of some syndicated gambling legislation was the reporting of the link between such gambling and organized crime by the Kefauver Committee in the early 1950's. Following the Kefauver hearings, the American Bar Association drafted a model antigambling statute on which some of the State statutes are based. The Report of the President's Commission on Law Enforcement and Administration of Justice in 1967 and various State commission reports provided the impetus for much of the more recent legislation. For a detailed discussion of syndicated gambling statutes, see *Organized Crime Control Legislation*, The National Association of Attorneys General, January 1975.

<sup>59</sup> For example, the maximum penalty in Massachusetts is 15 years imprisonment and a \$10,000 fine; in Illinois and Indiana, the maximum is 5 years and \$5,000.

<sup>60</sup> New Jersey (1968), Colorado (1971), Florida (1973), Wyoming (1973), and Rhode Island (1974).

<sup>61</sup> One of the five States, Wyoming, does not permit the use of immunity in gambling cases.

<sup>62</sup> California, Kansas, Michigan, Nevada, Ohio, Washington, and Wisconsin.

<sup>63</sup> Immunity is also used in Texas, but is based on case law rather than statute.

<sup>64</sup> Immunity can be granted, in effect, in any criminal proceeding

subject to certain procedural requirements. In contrast, some other States limit the use of immunity to specific offenses.

<sup>65</sup> Only three of the States—New Jersey, Ohio, and Pennsylvania—authorize use immunity; other States authorize only transactional immunity. Where transactional immunity is granted, a witness cannot be prosecuted for any offense about which he is compelled to testify. With use immunity, however, the witness is immunized only for actual testimony and can be prosecuted on the basis of evidence from other sources.

<sup>66</sup> Specific immunity statutes have frequently included such offenses as bribery, conspiracy, gambling, and white collar crimes.

<sup>67</sup> Jonathan Rubinstein, *Gambling Enforcement and Police Corruption*, Washington, D.C.: Commission on the Review of the National Policy Toward Gambling, 1974.

<sup>68</sup> See Jonathan Rubinstein, *City Police*, New York: Ballantine Books, 1973, pp. 386-393. Although it is not known how widespread this practice is, there is no reason to believe that the Philadelphia Police Department is an isolated example.

<sup>69</sup> Each gambling surveillance (both State and Federal) for the period 1968-1973 cost an average of \$7,792. It should be noted that this was the next-to-lowest average cost among a group of offenses which include narcotics, bribery, theft, counterfeiting, and extortion. Only surveillances in extortion cases were made less costly. (See Report of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, Washington, D.C.: Government Printing Office, 1976, p. 260.) Infiltration of the higher levels of gambling organizations requires undercover operations of considerable duration. Unlike narcotics undercover operations, undercover gambling operations are not very productive.

<sup>70</sup> The degree of effectiveness of gambling wiretaps is discussed in the Report of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, p. 142 ff.

<sup>71</sup> National Association of Attorneys General, *Organized Crime Control Legislation*, January 1975, p. 106.

<sup>72</sup> The fact that this is true of many other offenses does not diminish its importance in gambling enforcement. The concern of law enforcement personnel about the lack of serious sentencing in gambling cases has been brought to the attention of this Commission in public testimony, interviews, informal conversations, and survey responses.

<sup>73</sup> Several factors contribute to the limited availability of disposition and sentencing statistics for gambling. Although arrest figures are maintained by police departments, disposition data are based on the Uniform Crime Report convention, by which annual dispositions are recorded only for persons whose cases are disposed of during the same year in which they were arrested. Summary sentencing statistics are rarely maintained by police departments. Prosecutorial data, where available, consist primarily of conviction rates without complete information on the number of cases dismissed or nolle prossed; generally contain no information reflecting the reasons that cases have been dismissed or nolle prossed; often appear to use a data base other than arrests or cases referred for prosecution; and almost never contain summary sentencing statistics. Summary court data are often maintained for management purposes only, and thus contain no offense-specific information. Sentencing data, while maintained by courts on a case-by-case basis, are seldom maintained in summary form. The fact that, with rare exceptions, criminal justice statistics are not maintained on a systemwide basis results in inconsistent data sets. For example, 1973 statistics on gambling offenders in the District of Columbia are available from three separate sources, each of which contains a different number of offenders. The Metropolitan Police Department records approximately 1,300 persons arrested for gambling in 1973 while the Prosecutor's Management Information System records approximately 400. The Superior Court of the District of Columbia lists about 450 gambling defendants whose cases were filed in 1973 and disposed of in 1973 or 1974. Differences in counting conventions and the fact that not all persons

arrested appear in Superior Court explain some, but not all, of the discrepancies.

<sup>74</sup> Jonathan Rubinstein, *City Police*, New York: Ballantine Books, 1973, p. 379.

<sup>75</sup> See footnote 14.

<sup>76</sup> Testimony of Stephen A. Schiller, Executive Director, Chicago Crime Commission, before the National Gambling Commission, September 23, 1975.

<sup>77</sup> See *The Effect of Increased Enforcement of Gambling Laws* (Riedel and Thornberry), Appendix to this Report.

<sup>78</sup> Fifty-one percent of the Washington cases were dismissed compared to 27 percent of the Newark cases. The conviction rate was 64 percent for the Newark cases and 46 percent for the Washington cases.

<sup>79</sup> A policy of severe sentences in gambling cases was approved by the New Jersey Supreme Court in *State v. Ivan* in 1960. In upholding a sentence of 1 to 2 years' imprisonment and a \$5,000 fine for book-making, the court said:

If the crime is a calculated one and part of a widespread criminal skein, the needs of a society may dictate that the punishment more nearly fit the offense than the offender. There the sentencing judge may conclude he should give priority to punishment as a deterrence to others and as an aid to law enforcement. (162 A.2d at 853)

In 1967, the State's Chief Justice issued an administrative order aimed at achieving uniformity in gambling sentences by requiring that a single judge in each county sentence all gambling offenders.

The Supreme Court is of the view that it is essential for the fair and effective administration of criminal justice that judges in imposing sentences adhere to the same general policy in cases which may involve syndicated crime. Unfortunately, in gambling cases efforts to achieve such uniformity, even within the same county, have not been successful when sentences have been imposed by whatever judge happens to be sitting at the time. Accordingly, the Supreme Court considers it necessary to require that the Assignment Judge in each county either personally handle all sentencing in gambling cases or designate a particular judge to impose sentence in all such cases, even though the case may have been tried or the plea taken before another judge.

<sup>80</sup> See *Gambling Enforcement in the District of Columbia* (Duncan), Appendix to this Report.

<sup>81</sup> Testimony of Judge Robert J. Columbo, Detroit Recorder's Court, June 25, 1975, and of Judge Vincent Brennan, Michigan Court of Appeals, June 24, 1975, before the National Gambling Commission, Detroit, Michigan.

<sup>82</sup> Pennsylvania Crime Commission. *Patterns of Sentencing in Allegheny County Gambling Cases*. Harrisburg, Pennsylvania, 1974.

<sup>83</sup> Testimony of former Judge Edward F. Bell, Wayne County Circuit Court, before the National Gambling Commission, Detroit, Michigan, June 24, 1975.

<sup>84</sup> See *Citizen Views of Gambling Enforcement* (Mangione, et al.), Appendix to this Report.

<sup>85</sup> Only 30 percent thought gambling violators were usually arrested, and only 32 percent thought they were likely to go to jail.

<sup>86</sup> The lack of association between perceptions of organized crime involvement and level of support for gambling enforcement is unexpected, and may reflect inadequate measurement of these concepts.

<sup>87</sup> Twice as many respondents (42 percent) said it is "very important" to enforce gambling laws. More sophisticated measures are needed to explain this inconsistency. One possibility is that public drunkenness, prostitution, and pornography impinge more on citizens' lives, making enforcement against these offenses more important than that against gambling, which may be less intrusive.

<sup>88</sup> Also associated with a high rating of police were a perception of police as noncorrupt and a belief that police would act on citizens' complaints about stolen goods or sports bookmaking.

<sup>89</sup> See Report of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, pp. 4 and 6.

<sup>90</sup> Op. cit., p. 271.

<sup>91</sup> Safeguards on the use of electronic surveillance are discussed throughout the Report of the Wiretap Commission.

# CHAPTER 4. SURVEY OF AMERICAN GAMBLING ATTITUDES AND BEHAVIOR

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As part of its statutory mandate to undertake a comprehensive legal and factual study of gambling in the United States, the National Gambling Commission in February 1975 asked the University of Michigan Survey Research Center to conduct a detailed survey of American gambling practices and attitudes. The survey contains a wide range of information about people who gamble—the games they prefer, their exposure to and experience with various types of gambling, their attitudes toward legalization. It also includes data on the amount of gambling that occurs both legally and illegally, and on the revenue potential of legal gambling.

The Commission has evaluated the survey findings and concluded that the survey procedure was sound and that the vast majority of the survey findings are reliable. However, as a result of a public hearing and consultation with various law enforcement and research experts, the Commission has determined that the survey results with respect to the amount of money that is wagered illegally each year cannot be considered definitive. (See “Wagering Estimates,” below.)

The debate on gambling policies covers many issues, from the revenue potential of legalized gambling to the possible corrupting effect of casinos. The National Gambling Commission, having been unable to come to definite conclusions about many of these issues because of lack of reliable information, designed its survey to provide that missing information.

Among the questions which the project attempted to resolve were the following:

- Does legalization encourage or discourage illegal gambling? On the one hand, legal gambling might provide a convenient substitute for illegal gambling forms. On the other hand, it may be impossible, because of tax policies, to attract the illegal bettor away from illegal games. Legalization may make current nonbettors feel that betting is morally less

reprehensible than they feel at present, thus adding to the illegal market.

- Does legalized gambling offer a major new source of government funding? There has been a tendency to overestimate the revenue potential of new forms of legal gambling. The initial estimates of government revenue to be derived from the first State lotteries and from the introduction of off-track betting in New York City proved to be far too high.
- Is taxation of gambling particularly regressive? It is commonly asserted that the poor tend to spend a larger percentage of their income on gambling than do the upper income groups. If this is true, taxation of legal gambling may be particularly unfair, since it penalizes those who can least afford to pay the taxes.
- Would legalization of gambling lead to a substantial increase in the number of compulsive gamblers—persons who gamble so heavily that it threatens their family and work relationships? It is often assumed that there are many people who currently do not gamble heavily, but who would become uncontrolled players if gambling were legal, easily accessible, and heavily promoted. On the other hand, it is also often argued that illegal gambling is now so prevalent and accessible that legalization would have little impact on a person with a strong interest in gambling.
- Is there strong sentiment in this country in favor of relaxing the current prohibitions against gambling? Does the sentiment toward legalization vary among the regions of the Nation and between the major cities and the rest of the country? In the past, few people favored the legalization of most forms of gambling. However, attitudes toward government regulation of essentially individual and elective behavior have changed. Whether this has led to a change in favor of legalization of specific forms of gambling must be determined.

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## SURVEY METHODOLOGY

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The information and figures discussed in this Report were generated by personal interviews conducted by the Survey Research Center of the University of Michigan in the summer of 1975. The interviewers are permanent employees of the Survey Research Center; they work part-

time as interviewers and are supervised by a full-time staff. The interviews were all conducted at the residences of the respondents.

Participants in the sample were selected at random from the population of the Nation as a whole, excluding

members of the armed services and residents of institutions (e.g., prisons and hospitals). Since all prior evidence suggests that gambling is particularly prevalent among urban populations and males, the sample was designed so that there was a higher percentage of males and major city residents than other groups, thus insuring that as many data as possible were collected on bettors. In the calculations that follow, the fact that males and city dwellers had a higher probability of appearing in the sample was taken into account by giving those persons lower “weights” in making projections of the total volume of gambling. A total of 1,736 interviews were completed for the national sample, and the response rate was 75.5 percent. This means that nearly a fourth of the attempted interviews were not completed. The percentage of completed interviews was slightly higher than is usually obtained in national surveys; fewer than 12 percent of those approached refused to participate—a figure slightly smaller than usual, suggesting that gambling is no longer regarded as a particularly sensitive subject for discussion by most of the population.

In addition to the national sample, a special sample of 300 respondents was drawn from the three major urban areas of Nevada. These areas are Clark County (including Las Vegas), Washoe County (including Reno), and Carson City; together, they contain more than 80 percent of Nevada’s population. The response rate was 70 percent for

the Nevada sample. Of the nonrespondents, slightly more than half were persons who refused to cooperate, and this accounted for most of the difference between the response rates for the national and the Nevada samples. Before obtaining the interview in Nevada, the interviewer ascertained whether the respondent had lived in Nevada for less than 18 months or had moved to Nevada primarily because of the availability of legal gambling. If either of these conditions applied, the individual was not interviewed. This was done to help make the Nevada sample one that represents the effect of reasonably long exposure to legal gambling in many forms and to account for the fact that Nevada, because it has much more legal gaming than any other State, tends to attract persons with particularly strong gambling interests.

Some data were collected on almost every form of gambling that prior research had found to exist in the country. However, detailed data covering expenditure, frequency, and attitudes were collected only on a very limited number of betting types, those that were thought to be most important in formulating policy. The games covered in detail were horse betting, lotteries, casinos, bingo, sports betting, and numbers. Few data were collected on betting with friends or on greyhound racing. Since the interview was already a very long one, averaging nearly an hour and a half each, it was necessary to curtail certain areas of inquiry.

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## SURVEY RESULTS

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### Gambling Participation

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It is important to look first at gambling participation patterns, not taking into account the amount bet but simply the percentage of particular groups that participated to any extent in various forms of gambling. These figures are given in table 4-1.

The first striking result is the breadth of participation. Some 61 percent participated in some form of gambling during 1974, and 68 percent reported having participated in some form during their lifetime. Since the nongamblers are heavily concentrated among those over 65, it is possible that the true figure for lifetime participation is higher because an elderly respondent may have forgotten his youthful gambling experiences.

While 61 percent participated in some form of gambling, about 13 percent only placed social bets with friends, leaving 48 percent who participated in a form of legal or illegal commercial gambling; however, that might mean only the purchase of a lottery ticket or participation in a bingo game at a local church.

Eleven percent of the population (15.5 million adults) participated in some form of illegal gambling. Those who bet illegally also bet legally; scarcely 1 percent of the illegal bettors failed to bet legally as well. On the other hand, there is a good deal of exclusivity for the various legal games. For the five major forms of legal gambling,

nearly half placed a bet on only one form. Similarly, for the four illegal games, 44 percent bet only on one form.

Although betting participation is widespread, it is by no means uniform. There is a much higher participation in the Northeast (80 percent) than in the South (40 percent). More males bet than females (68 percent vs. 55 percent) and more whites than nonwhites (62 percent vs. 52 percent). Low income groups show lower participation rates than higher income groups (24 percent for those with household income of less than \$5,000, compared to 74 percent for those over \$15,000). Similarly, participation rises uniformly with education, from 41 percent for those with less than a high school education to 79 percent for those who have completed college.

Looking at illegal bettors only, the profile changes sharply. The male-female differential becomes far sharper, while the white-nonwhite difference reverses itself. Regional differences become more pronounced among illegal bettors: The Northeast’s participation rate is three times that of the South. The difference between rural and city or suburban participation also increases.

**NEVADA RESIDENT GAMBLING.** Nevada residents, with easy access to many more forms of legal gambling than residents of other States, have a markedly different pattern of gambling participation. A higher percentage participate in commercial gambling, participate more often, and bet more money per annum. It is also significant that the regressivity of Nevada resident gambling is far greater than

in the rest of the Nation. Participation rates and volume of wagering are contained in tables 4-2 and 4-3, and regressivity measures are in table 4-4.

The differences between the national and the Nevada gambling figures show up not only in the overall intensity of gambling involvement but in the differences between various social and economic groups who bet. Whereas for

the national sample participation declines uniformly with age, in Nevada the age group 25-44 participates more than the 18-24 group. Similarly, gambling participation rises uniformly with education in the national sample; in Nevada, it peaks with completion of high school and declines slightly with further education.

TABLE 4-1.—REPORTED BETTING PARTICIPATION BY DEMOGRAPHIC CHARACTERISTICS

		Total sample	Never bet	Current non-bettor	Any	Legal commercial	Current bettors (1974)				
							Only legal commercial	Friends	Only friends	Illegal	Heavy illegal*
Total Sample	%	100	32	39	61	44	7	50	13	11	3
Male	%	46	25	32	68	47	5	60	16	17	5
Female	%	54	39	45	55	42	9	42	10	5	1
White	%	85	31	38	62	45	7	52	13	10	2
Nonwhite	%	13	39	48	52	38	8	38	8	17	5
18-24 years	%	14	25	27	73	48	6	65	20	15	3.1
25-44 years	%	43	26	31	69	52	6	59	13	14	3.1
45-64 years	%	31	33	40	60	42	10	44	12	8	2.8
65+ years	%	12	65	77	23	17	5	15	5	2	*
Employed	%	60	23	29	71	50	7	61	16	15	4
Unemployed	%	4	25	31	69	54	2	61	8	15	4
Under \$5,000	%	13	66	76	24	17	3	18	4	3	*
\$5,000-\$10,000	%	18	42	49	51	39	6	43	10	8	2.4
\$10,000-\$15,000	%	22	24	31	69	46	10	51	19	10	2.6
\$15,000+	%	41	21	26	74	54	7	63	15	15	3.3
Married	%	75	31	38	62	44	7	51	14	11	2.5
Divorced/Separated	%	7	23	29	71	57	5	55	7	16	6.6
Widowed	%	7	72	82	18	16	6	11	2	2	*
Never Married	%	12	27	30	70	53	9	59	14	15	2.6
Did not graduate H.S.	%	32	49	59	41	30	7	30	7	8	2
High school graduate	%	31	29	34	66	48	9	53	14	12	3.5
Some college	%	21	22	28	72	52	4	64	16	13	3.7
College graduate	%	16	18	21	79	56	8	67	18	11	1.3
Catholic	%	27	17	20	80	65	11	63	14	16	4
Protestant	%	66	38	46	54	36	5	45	11	9	2.4
Presbyterian, Lutheran, Congregational, Episcopal	%	16	20	26	74	51	7	64	21	10	2.7
Bible-oriented sects	%	11	57	67	33	19	6	25	9	8	2.2
Methodist	%	13	30	37	63	41	3	53	15	11	2.2
Baptist	%	19	47	55	45	30	4	37	11	10	2.8
Jewish	%	2	23	23	77	66	7	66	8	19	2.1
Atheist, no preference	%	4	44	60	40	33	3	36	5	5	.2
West European	%	40	23	30	70	49	7	59	17	11	2.4
East European	%	9	18	19	81	65	9	68	13	14	2.0
British	%	30	29	38	62	44	7	52	14	8	.6
Irish	%	22	26	35	65	47	7	56	14	10	2.4
Spanish-speaking	%	4	33	39	61	51	6	47	3	19	5.6
African	%	5	37	46	54	42	6	41	9	13	5.0
Italian	%	6	20	23	77	64	15	61	7	18	7.8
All others	%	21	51	59	41	29	7	31	8	9	2.3

TABLE 4-1.—REPORTED BETTING PARTICIPATION BY DEMOGRAPHIC CHARACTERISTICS *continued*

		Total sample	Never bet	Current non-bettor	Any	Legal commercial	Current bettors (1974)				
							Only legal commercial	Friends	Only friends	Illegal	Heavy illegal <sup>a</sup>
Northeast	%	23	17	20	80	67	8	67	8	19	6
North Central	%	28	28	34	66	48	9	48	15	12	3
South	%	31	52	60	40	23	5	31	12	6	1
West	%	18	24	35	65	47	7	56	17	7	*
City 100,000 or more	%	27	28	34	66	46	7	54	14	15	5
Suburb of city over 500,000	%	23	23	28	72	56	7	59	12	14	3
Small cities, rural	%	51	39	47	53	38	7	43	12	7	1
25 or less miles from 25 largest cities	%	33	28	33	67	49	8	53	12	15	4
26-49 miles from 25 largest cities	%	12	20	24	76	57	2	69	16	15	4
50 miles or more from 25 largest cities	%	55	38	46	54	39	7	44	12	8	2

\*Less than one-half of 1 percent.

<sup>a</sup>Respondents wagering more than \$200 a year on illegal gambling.

NOTE: Percentages read across the table.

TABLE 4-2.—1974 GAMBLING BEHAVIOR OF UNITED STATES AS A WHOLE COMPARED TO NEVADA RESIDENTS\*

Game	United States		Nevada	
	Participation (% of adult pop.)	Average annual wager per bettor	Participation (% of adult pop.)	Average annual wager per bettor
<b>Legal</b>				
Horses at track	13.9	\$ 448	3.2	\$103
Off-track betting parlors	13.5 <sup>a</sup>	1,118	6.0	179
Slot machines	9.4	448	72.1	377
Keno			54.2	N/A
Casino games			27.3	846
Bingo	18.7	74	24.1	104
Lottery	47.8 <sup>b</sup>	25	—	—
Sports betting parlors	—	—	8.0	158
Total legal commercial	44.0 <sup>c</sup>	273	76.0 <sup>d</sup>	665 <sup>d</sup>
<b>Illegal</b>				
Sports books	1.9	623	2.9	275
Horse books	2.4	416	1.9	131
Numbers	3.0	273	0.0	—
Sports cards	3.0	44	3.0 <sup>e</sup>	36 <sup>e</sup>
Total illegal	11.2	318	4.3	257

\*All estimates are subject to sampling variation.

<sup>a</sup>New York only.<sup>b</sup>States with legal lotteries only.<sup>c</sup>Includes dog races, jai-alai, and other legal forms of gambling not shown above.<sup>d</sup>Includes sports cards.<sup>e</sup>Sports cards are legal in Nevada.

TABLE 4-3.—COMPARISON OF REPORTED BETTING PARTICIPATION BY DEMOGRAPHIC CHARACTERISTICS, NEVADA AND NATIONAL SAMPLE

		Current Bettors	
		Nevada	National
Total Sample	%	78	61
Male	%	87	68
Female	%	70	55
White	%	79	62
Nonwhite	%	66	52
18-24 years	%	75	73
25-44 years	%	86	69
45-64 years	%	80	60
65+ years	%	41	23
Employed	%	87	71
Unemployed	%	76	69
Under \$5,000	%	63	24
\$5,000-\$10,000	%	74	51
\$10,000-\$15,000	%	78	69
\$15,000+	%	85	74
Married	%	80	62
Divorced/separated	%	78	71
Widowed	%	54	18
Never married	%	78	70
Did not graduate high school	%	71	41
High school graduate	%	82	66
Some college	%	80	72
College graduate	%	78	79
Catholic	%	83	80
Protestant	%	77	54
Presbyterian, Lutheran, Congregational, Episcopal	%	92	74
Bible-oriented sects	%	82	33
Methodist	%	72	63
Baptist	%	77	45
Jewish	%	70	77
Atheist, no preference	%	55	40
West European	%	79	70
East European	%	67	81
British	%	79	62
Irish	%	79	65
Spanish-speaking	%	72	61
African	%	46	54
Italian	%	92	77
All others	%	80	41

As might be expected, the most marked differences occurred in casino gaming. More than 72 percent of Nevada residents played the slot machines in 1974; no comparable participation figure is available for the national sample, since most non-Nevada residents play slot machines only while at a casino, where they also play other games. For the Nevada resident, slot machines are readily available in many stores and public places outside of casinos. Twenty-seven percent went to a casino; this

compares with 9.4 percent for the national sample. More striking are the figures on the amount wagered on these two forms of gambling by Nevadans: \$377 per player on slot machines inside and outside of casinos and \$846 for casino and table games. For the national sample, the average bet for both slot machines and casinos and table games totaled only \$448 per player (see table 4-5).

Two other games attracted substantial participation: keno and bingo. Both are offered at Nevada casinos. It is interesting to note that bingo retains its appeal even with other casino games available. The Nevada participation rate of 24 percent for bingo is higher than the 21 percent for other States where it is legal and where it is often the only legal form of gambling available. Keno is not played outside Nevada.

Two other forms of gambling are legally available only in Nevada—horse betting parlors and sports betting parlors. Sports betting parlors attract a higher participation rate than does illegal bookie betting on sports in the rest of the Nation, but the per-bettor handle is a great deal lower, \$158 compared to \$623. This suggests that the legal parlors may attract new, low-volume bettors. The same holds for off-track betting parlors, but it should also be noted that there are no significant horseracing or dogracing operations in Nevada.

Illegal betting in Nevada is less common and less intense than in the rest of the Nation. Only 4.3 percent participated in any illegal form, compared to 11 percent outside of Nevada, and the average amount wagered per illegal bettor in Nevada was substantially lower for both horse and sports-book betting. It is understandable that

TABLE 4-4.—REGRESSIVITY OR PROGRESSIVITY BY TYPES OF GAMBLING, UNITED STATES AND NEVADA ONLY

Game	Index of progressivity (P) or regressivity (R)	
	U.S. as a whole	Nevada residents only
Numbers	.44 (R)	—
Sports cards	.40 (R)	"/
Lottery	.31 (R)	—
Bingo	.30 (R)	.58 (R)
Horse books	.27 (R)	"/
Horse tracks	.17 (R)	"/
Off-track horse betting parlors	.07 (R)*	.56 (R)
Slot machines	.26 (P)	.41 (R)
Keno		N/A
Casino tables		.46 (R)
Legal sports betting parlors	—	.36 (R)
Illegal sports books	.29 (P)	"/
All types combined	.17 (R)	.42 (R)
For comparison: all sales and excise taxes	.15 (R)	N/A
Federal income tax	.15 (P)	N/A

\*New York OTB only.

"/Sample too small to permit reliable estimate.

numbers was not played at all in the State in 1974, given Nevada's relatively homogeneous population and lack of large urban areas.

All forms of gambling are more regressive in Nevada than elsewhere (table 4-4). In fact, bingo in Nevada is slightly more regressive than any other form of gambling, either in Nevada or in the rest of the Nation. Only numbers and sports-card betting, outside of Nevada, are more regressive than the least regressive of Nevada's games: legal sports betting parlors.

Only 2 percent of Nevadans bet only with friends during 1974, compared with 19 percent outside of Nevada. It

appears that widespread legal gambling facilities substitute not only for illegal gambling but also for social gambling. Further evidence of this can be drawn from figures on lifetime participation in illegal gambling. In the national sample this percentage rises from 16 percent in the youngest group to 29 percent in the oldest group. In Nevada, the figure for the 18-24 age group is 2 percent but for those over 65, it is 24 percent. This suggests that there are many people in Nevada who used to bet illegally but now, given the availability of legal games, do not (table 4-6).

TABLE 4-5.—GAMBLING AND FAMILY INCOME, BY TYPE OF GAME

	Family income						Total respon- dents*
	Under \$5,000	\$5,000 10,000	\$10,000 15,000	\$15,000 20,000	\$20,000 30,000	\$30,000 and over	
Horses-track (States with legal tracks only)							
Percent who bet	8.7	15.5	11.2	17.2	20.9	20.3	15.9
Average annual bet per bettor	\$185.5	\$293.51	\$395.75	\$577.48	\$294.20	\$435.87	\$512.70
Average annual bet per capita	15.85	45.49	44.32	99.33	61.49	88.48	78.44
Average annual takeout per capita (takeout rate, 16.6%)	2.63	7.55	7.36	16.49	10.21	14.69	13.02
Horses-OTB (New York only)							
Percent who bet	9.9		14.8	21.2	27.3		13.5
Average annual bet per bettor	\$1,594.97		\$353.75	\$743.37	\$1,412.07		\$1,118.35
Average annual bet per capita	157.90		52.36	157.59	358.48		150.98
Average annual takeout per capita (takeout rate, 21%)	33.16		11.00	33.09	80.95		31.71
Legal casinos							
Percent who bet	4.12	8.06	6.21	12.33	12.31	20.62	9.45
Average annual bet per bettor	\$586.57	\$193.17	\$124.33	\$336.57	\$261.70	\$1,293.93	\$448.26
Average annual bet per capita	24.58	15.57	7.72	41.50	31.74	266.81	42.36
Average annual takeout per capita	3.69	2.34	1.16	6.23	4.76	40.02	6.35
Bingo							
Percent who bet	8.68	18.84	20.27	21.56	22.05	17.17	18.73
Average annual bet per bettor	\$141.66	\$25.59	\$113.91	\$54.90	\$64.70	\$97.34	\$74.11
Average annual bet per capita	12.30	4.80	23.09	11.84	14.27	16.71	12.97
Average annual takeout per capita (takeout rate, 33%)	4.06	1.58	7.62	3.91	4.71	5.51	4.28
Lotteries (States with lotteries only)							
Percent who bet	30.6	45.5	52.5	60.0	57.4	50.6	47.8
Average annual bet per bettor	\$24.43	\$37.16	\$32.07	\$18.59	\$24.79	\$17.24	\$25.26
Average annual bet per capita	7.48	16.91	16.84	11.15	14.23	8.72	12.71
Average annual takeout per capita (takeout rate, 55%)	4.12	9.30	9.26	6.13	7.83	4.80	6.99
Sports books							
Percent who bet	.79		1.21		3.00		1.91
Average annual bet per bettor	\$127.76		\$224.95		\$891.89		\$623.03
Average annual bet per capita	1.01		2.72		26.76		7.38
Average annual takeout per capita (takeout rate, 4.5%)	.05		.12		1.20		.54



TABLE 4-5.—GAMBLING AND FAMILY INCOME, BY TYPE OF GAME *continued*

	Family income						Total respon- dents <sup>a</sup>
	Under \$5,000	\$5,000 10,000	\$10,000 15,000	\$15,000 20,000	\$20,000 30,000	\$30,000 and over	
Horse books							
Percent who bet	0.58	1.92	2.72	3.11	2.24	3.51	2.37
Average annual bet per bettor	\$38.87	\$932.29	\$335.16	\$159.70	\$578.35	\$606.64	\$416.53
Average annual bet per capita	2.25	17.90	9.12	4.97	12.96	21.29	9.87
Average annual takeout per capita (takeout rate, 16.6%)	.37	2.97	1.51	.83	2.15	3.53	1.64
Numbers							
Percent who bet	1.20	3.56	2.71	3.39	2.87	4.84	3.01
Average annual bet per bettor	\$38.94	\$393.26	\$436.11	\$198.14	\$171.71	\$111.34	\$273.19
Average annual bet per capita	.47	14.00	11.82	6.72	4.93	5.39	8.22
Average annual takeout per capita (takeout rate, 54%)	.25	7.56	6.38	3.63	2.66	2.91	4.44
Sports cards							
Percent who bet	1.13	2.93	4.90	5.66	4.03	3.0	3.0
Average annual bet per bettor	\$48.56	\$111.56	\$28.61	\$10.91	\$30.12	\$43.70	\$43.70
Average annual bet per capita	.55	3.27	1.40	.62	1.21	1.32	1.32
Average annual takeout per capita	.33	1.96	.84	.37	.73	.83	.83
Total Games <sup>b</sup>							
Average bet per capita	\$63.46	\$116.23	\$133.99	\$203.69	\$167.00	\$435.35	\$177.86
Average takeout per capita	15.51	31.69	35.82	39.26	34.78	73.39	38.03
Effective takeout rate (percent)	24.5	27.3	26.9	19.3	20.9	16.9	21.5

<sup>a</sup>Figures by income bracket include only individuals for whom both income and participation data are available. Figures for total respondents include individuals for whom we have participation data, regardless of whether or not income data are available.

<sup>b</sup>Total games are sums of per capita items by type of game. Since figures for betting at a track are limited to residents of States with legal tracks and betting on lotteries is limited to residents of States with legal lotteries, the totals do not match corresponding observed totals for the entire United States.

TABLE 4-6.—LIFETIME AND 1974 DISTRIBUTIONS OF BETTORS AMONG BETTING CHANNELS BY AGE

	Total		18-24		24-44		45-64		65+	
	Life 74 %	Life 74 %	Life 74 %	Life 74 %	Life 74 %	Life 74 %	Life 74 %	Life 74 %	Life 74 %	Life 74 %
<b>Nevada</b>										
Illegal	15	6	2	0	15	10	19	2	24	0
Legal commercial	85	92	98	96	85	88	80	97	79	100
Friends only	0	2	0	4	0	2	1	1	0	0
<b>National</b>										
Illegal	24	13	16	13	23	15	29	11	29	4
Legal commercial	71	68	71	63	73	67	68	71	66	77
Friends only	5	19	13	23	4	18	3	18	5	19
Nevada illegal*	.40		0		.67		.11		0	
National illegal*	.54		.81		.65		.38		.14	

\*These figures represent bettor loyalty to illegal gambling, and describe the likelihood of an "ever bettor" doing so in 1974 for these age groups. The .81 figure for national illegal betting in the 18-24 year old bracket, means essentially that 81 percent of those who have bet illegally did so in 1974 for the Nation, but none of the Nevadans in this age bracket have bet illegally.

## Wagering Estimates

On the basis of the reported level of legal gambling by each respondent in the sample, the survey estimated the total volume of money legally wagered on 10 legal games—\$17.3 billion. For each legal game, the total volume estimated by the survey was compared with available official estimates. The survey estimated the volume of illegal wagering at \$5 billion, with a possible error factor of 2, which would place the upper limit of illegal expenditures at \$10 billion. (The figures are shown in table 4-7.)

The survey's estimated legal handle falls within 0.1 percent of the total reported officially by the operators of legal games, a statistical concurrence that would seem to validate the survey's accuracy on this score. The accuracy of the figures on the illegal handle is less certain.

The U.S. Department of Justice, in May 1974, estimated the illegal handle to be between \$29 billion and \$39 billion. Two years later, Department officials acknowledged to the Commission that it was impossible for the Department to provide an estimate with any degree of confidence; they could only report accurately on the volume of gambling they had uncovered through actual surveillance and raids. It should be noted that during 1971

and 1972—the period of the Department’s most intensive antigambling enforcement—it had acted against illegal operations with a total handle of only \$750 million.

Although the FBI has not provided the Commission with a specific estimate of the total illegal handle, it has released various figures—such as \$750 million in payoffs by gambling operations to law enforcement officials—that suggest a total volume of illegal gambling higher than the Commission’s adjusted survey estimate.

The Bureau of Alcohol, Tobacco and Firearms, an agency of the U.S. Treasury with responsibility for the administration of the Federal wagering excise and occupational stamp taxes, has given estimates as high as \$67 billion. However, agency officials told the Commission that this figure was not original but had been extrapolated from estimates made by other agencies.

In 1967, the President’s Commission on Law Enforcement and Administration of Justice estimated a yearly illegal handle of \$20 billion but warned that the “Commission cannot judge the accuracy of these figures.”

How is the apparent discrepancy between the accuracy of the estimates of legal and illegal handles to be accounted for, since the Michigan survey’s polling techniques were identical in each case? Even granting a margin of error in the reporting of legal wagering by the survey’s respondents—or of underreporting or duplicity in declarations by legal gambling operators—the estimate of legal gambling handle seems to be substantially correct, and the Commission accepts that finding.

It cannot endorse the survey’s illegal estimate, however, for the following reasons—which are unrelated to its disparity from the other estimates cited above.

- Unlike a low-stakes legal bettor, the heavy illegal bettor who surfaces as a potential respondent in a survey of this nature has little incentive to tell the truth. He might very well question whether the interrogator is truly a representative of a survey

organization or might be an undercover agent of the IRS or FBI. To him, candor may be deemed inadvisable.

- While the overall national response rate to the survey was approximately 75 percent, in downtown urban areas the response rate was only 51 percent. People who live in the Nation’s deteriorating inner cities may be more fearful and distrustful of strangers than the population as a whole, and less willing to talk about an activity that they know or suspect to be illegal.
- Bettors, like people engaged in high-volume stock market trading, keep track of the amount they won or lost, not the total transactions. For example, a heavy bettor who has wagered \$1,000 on each of five football games on a given weekend will focus on the net outcome—i.e., that he has won (or lost) \$1,000 or \$2,000—rather than on his aggregate transactions for the weekend, \$5,000.
- In its research, interviews, and testimony—some of it admittedly hearsay—the Commission has been told about so many bettors in the \$100,000-and-over annual bracket that it is convinced that the volume generated by these people is not reflected in the survey estimates. (The heaviest bettor in the survey admitted to an annual wager of only \$30,000.) The reason, the Commission feels, lies not with the survey techniques, but in the understandable reticence of some of the respondents, as previously discussed.

The Commission believes that neither this nor any other survey is able to measure accurately the specific dollar level of an illegal activity, and it cannot emphasize too strongly that the survey’s estimates of the dollar volume of illegal gambling, including the estimates for individual games, should not be considered as viable data, especially for purposes of formulating gambling policy. They are a point of reference only, one of many measuring devices that are useful in discussing a complex question. Too often,

TABLE 4-7.—TAKEOUT AND HANDLE FOR U.S. COMMERCIAL GAMBLING, 1974

	Takeout rate %	Total takeout*	Estimate derived from: Sample	Published data	Survey % over/under
<b>Legal</b>					
Horses at track	16.0	\$1,247,000,000	\$ 7,930,000,000	\$ 7,512,000,000	+5.6
OTB, New York	21.0	171,000,000	967,000,000	786,000,000	+22.9
Legal Casinos	15.0	1,004,000,000	6,076,000,000	6,693,000,000	−9.2
Bingo	33.0	551,000,000	1,735,000,000	1,672,000,000	+3.8
Lotteries	55.0	374,000,000	639,000,000	681,000,000	−6.2
Total Legal	19.3	\$3,347,000,000	\$17,347,000,000	\$17,345,000,000	−0.0
<b>Illegal</b>					
Sports Books	4.5	105,000,000	2,341,000,000		
Horse Books	16.6	227,000,000	1,368,000,000		
Numbers	54.0	575,000,000	1,064,000,000		
Sports Cards	60.0	115,000,000	191,000,000		
Casino Games	15.0	19,000,000	110,000,000		
Total Illegal	20.5	\$1,039,000,000	\$ 5,074,000,000		
Total Legal and Illegal	19.6	\$4,385,000,000	\$22,421,000,000		

\*Based on handle derived from the survey.

such estimates come to be taken for fact merely through repetition. If the survey's estimates of a \$5 billion illegal handle are taken at face value, and the Justice Department's estimates of \$29 billion-\$39 billion are refuted, it might be construed that the incidence of illegal gambling in the United States is only one-sixth to one-eighth of what it is commonly thought to be, and a significant reduction in enforcement activity would follow. Nothing could be further from the Commission's intent.

In every other respect, however, the Commission has full confidence in the findings of the University of Michigan survey. These include the findings on gambling participation generally as well as specific activities and games, attitudes toward legalization and prohibition, patterns of behavior, sociological profiles, and demographic analyses. Accordingly, in subsequent discussion throughout this Report, all survey-generated information with the exception of dollar estimates of illegal activity will be treated as accurate and factual.

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## Economic Aspects of Gambling

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The figures referred to so far are estimates of the handle and not of the "expenditure" on each game. Most of the money wagered is returned to the players. The percentage retained by the operators, either to cover expenses or to pay taxes, is referred to as the takeout rate. In order to calculate the expenditure on each game it is necessary to multiply the total handle by the takeout rate. Of \$7.5 billion bet at the track, nearly 83 percent was returned to the players, so that the actual expenditure on betting at the track was only \$1.25 billion. Obviously, not every player at the track gets back an equivalent amount of his or her wagers, but on the average, over a long period of betting, the player can be reasonably assured of getting approximately 83 percent back. This assumption was used in calculating the expenditures for each game for each income group (table 4-8).

One of the major findings of the survey was that expenditures on gambling were regressive—i.e., that lower income groups spent a greater percentage of their income on gambling than did upper income groups. This was true for gambling expenditures taken as a whole as well as for most individual games. The result of this is that taxes on legal gambling appear to be quite regressive—about as regressive, in fact, as sales taxes generally (see table 4-4).

Among all income classes, the average annual amount bet on gambling rises steadily from \$63.46 for the lowest income group (household income under \$5,000) to \$435.35 for the highest income group (household income over \$30,000). However, the effective takeout rate tends to decline across income groups, and the amount spent on gambling declines as a percentage of income from 0.62 percent for those under \$5,000 to 0.18 percent for those over \$30,000 (tables 4-5 and 4-8). The decline in the average takeout rate for upper income group gambling

reflects the fact that they bet more of their total gambling dollars on casino and sports betting, which have lower takeout rates, than on numbers and lotteries, on which the lower income groups bet more heavily.

**ESTIMATES OF POTENTIAL REVENUE.** The revenue available from legalized gambling depends on three related factors: potential volume of play, operating costs, and tax rates. The relationship between the three is based on the effect of increasing the takeout rate (the sum of operating costs and the tax rate) for a given game. The higher the takeout rate, the lower the demand for the game.

In the following calculations an effort was made only to estimate the maximum conceivable revenue to be obtained from legalization of individual games. The final total, \$9 billion, is obtained by adding the maximums for each of the games. (Only \$1.2 billion is currently being realized.) In interpreting these figures for policy purposes, two factors should be noted: (1) These calculations ignore the interaction between the demand for different legal games. For example, the addition of a legal numbers game will almost certainly diminish the volume of lottery play. (2) On the other hand, legalization of one game tends to increase the volume of all forms of gambling generally. It seems likely that the first effect is the more important of the two, so that the \$9 billion total survey estimate may be somewhat high. Because proponents of legalization often tend to provide very high overestimates in the policy debates, the Commission's figures are more realistic than theirs, even given the caveat noted in (1) above.

Table 4-9 provides for each game the estimated potential volume of play if it were legalized in every State, the tax rate that would yield the highest net revenue to the governments, and an estimate of that revenue. In some cases the optimal tax rate was estimated on the basis of available evidence concerning the sensitivity of demand to variations in takeout rate, given the costs of operation. That was the case for betting at the track, off-track betting, and sports parlors. For the other games, it was either assumed that governments would continue to tax them at the same rate as currently (lotteries) or that the legal game would have to pay out the same percentage as the illegal game (numbers). In these latter two groups of games it was not possible to find data that would permit calculation of the optimal tax rate.

Although table 4-9 indicates that while casino gaming, excluding slot machines, might generate the second highest handle of all games, it is not seen as a large source of government revenue. This reflects the assumption that other States would follow Nevada and place only a light tax, 5 percent, on the gross winnings of the casino. In most debates concerning the revenue potential of casino gaming, proponents stress the indirect tax benefits that arise from greater tourist traffic—such as higher occupancy rates in hotels and expenditures on other leisure-time activities such as restaurants and nightclubs. The calculations concerning slot machines also show this

pattern: very high handle projections—over \$40 billion—but low net revenues to government. At the other extreme is the estimate for numbers, where relatively modest volume yields high revenue. Numbers players, like lottery participants, are accustomed to high takeout rates. The illegal game tends to require a lot of manpower and hence is costly to operate. A legal game, as has been shown in New Jersey, Rhode Island, and Massachusetts, can, through use of machines, operate a great deal more cheaply.

## Gambling Beliefs and Behavior

Gamblers are more aware of the existence of gambling facilities than are nongamblers; they are also more knowledgeable about gambling laws, have more positive views on the desirability of legal gambling, and hold less negative views on the consequences of legalization. Furthermore, gamblers think of gambling as more exciting than nongamblers do, have greater faith in the integrity

TABLE 4-8.—REGRESSIVITY BY TYPE OF GAME

	Under \$5,000 %	\$5,000- 10,000 %	\$10,000- 15,000 %	\$15,000- 20,000 %	\$20,000- 30,000 %	\$30,000 and over %	Total %
Horses-track							
Percent of income:							
Bet	0.63	0.61	0.35	0.57	0.25	0.22	0.50
Taken-out	0.105	0.101	0.059	0.094	0.041	0.037	0.083
Horses-OTB							
Percent of income:							
Bet		3.03	0.41	0.87		1.15	1.15
Taken-out		0.636	0.085	0.182		0.241	0.241
Legal casinos							
Percent of income:							
Bet	0.98	0.20	0.06	0.24	0.13	0.67	0.27
Taken-out	0.148	0.031	0.012	0.036	0.019	0.100	0.040
Bingo							
Percent of income:							
Bet	0.49	0.64	0.18	0.07	0.06	0.04	0.08
Taken-out	0.162	0.002	0.061	0.022	0.019	0.014	0.027
Lotteries							
Percent of income:							
Bet	0.30	0.23	0.13	0.06	0.06	0.02	0.08
Taken-out	0.16	0.12	0.07	0.04	0.03	0.01	0.05
Sports books							
Percent of income:							
Bet		0.02	0.02		0.11		0.08
Taken-out		0.001	0.001		0.005		0.003
Horse books							
Percent of income:							
Bet	0.09	0.24	0.07	0.03	0.05	0.05	0.06
Taken-out	0.015	0.040	0.012	0.005	0.009	0.008	0.010
Numbers							
Percent of income:							
Bet	0.02	0.19	0.09	0.04	0.02	0.01	0.05
Taken-out	0.010	0.101	0.051	0.021	0.011	0.007	0.028
Sports cards							
Percent of income:							
Bet		0.011	0.04	0.01	0.002	0.003	0.009
Taken-out		0.007	0.024	0.006	0.001	0.002	0.005
Total							
Percent of income:							
Bet	2.53	1.55	1.07	1.16	0.67	1.09	1.15
Taken-out	0.62	0.42	0.29	0.23	0.14	0.18	0.25

TABLE 4-9.—REVENUE POTENTIAL OF LEGALIZED GAMBLING

	Participation	(Assumption)		Net State revenue <sup>a</sup> per capita	Potential U.S. total	
	rate %	Average annual handle Per bettor	Per capita		Handle	Revenue
Lottery	50.3	\$ 23.73	\$ 11.93	\$ 5.37	\$1,719,000	\$774,000
Numbers	50.0	100.00	50.00	22.50	7,206,000	3,243,000
Sports Betting Parlors	8.0	170.00	13.60	0.98	1,960,000	331,000
Sports Cards	10.0	50.00	5.00	2.50	721,000	360,000
Off-track Horse Betting	13.5	417.00	56.30	5.63	8,114,000	811,000
Horse Tracks	25.8	841.00	217.00	16.28	31,276,000	2,346,000
Slot Machines	72.1	377.00	279.00	2.72	40,212,000	392,000
Table Games	27.3	846.00	231.00	1.73	33,294,000	249,000
Total, 8 Games	N/A	N/A	864.00	57.71	124,527,000 <sup>b</sup>	8,288,000 <sup>b</sup>

<sup>a</sup>Allowance has been made for operating costs of State-operated games.

<sup>b</sup>Detail does not add to total due to rounding.

of gambling operations, were exposed to more gambling as children and as adults, make more realistic judgments about the amount of skill and/or luck involved in each game, grew up learning less didactic religious teachings about gambling, and currently adhere to less moralistic ideas about gambling.

Differences between gamblers and nongamblers in these respects are clear. Bettors on specific games differ from gamblers in general in much the same way: They hold more positive views toward their game, were exposed to that game earlier and more often in their lives, and think it more exciting and more honestly run than other forms of gambling.

The relationships between knowledge, attitudes, and behavior in gambling are interactive. Exposure to gambling facilities and early social influences affect later knowledge and attitudes as well as shaping gambling behavior. Gambling behavior in turn influences attitudes and knowledge. And levels of legalization influence—and perhaps in turn are influenced by—all these.

The moral upbringing of nongamblers differs from that of gamblers. More than half the nongamblers were taught as children that gambling is sinful, compared to 35 percent of the gamblers. Nongamblers were not only less exposed to gambling behavior in childhood but also began life with more negative attitudes toward gambling. As adults, they continued to have fewer contacts with gambling and continued to subscribe to their early beliefs about it more than did those who grew up with the same beliefs but were exposed to gambling. For gamblers, their exposure to the activity apparently neutralized the moral teachings.

Of the major American religious bodies, only one—the Baptist Church—teaches that gambling is inherently sinful. The Methodist Church, while not teaching that gambling is sinful, nevertheless strongly opposes all forms of commercial gambling. Other religious bodies teach that gambling is wrong only in excess or do not take a position on gambling at all. The survey did show, however, that the belief that gambling is sinful is not confined to those

reared within the Baptist community, and that some exposed to this view became gamblers despite their training.

Although moral considerations operate as an important constraint on gambling behavior, they are not so significant an influence as mere disinterest in playing (see table 4-10). Although 48 percent of nongamblers said they declined to play because they thought gambling “wrong” or “sinful,” even more nongambling respondents said they were just “not interested,” had “other things to do,” or “don’t know about it.” Monetary concerns were also mentioned more often than moral concerns.

Nongamblers are more involved than gamblers in church activities and more of them view gambling as having negative effects on family and community life. The reasons they give for not gambling demonstrate this concern in such terms as: It is “bad for the family.” Their social horizons, too, appear more limited than those of gamblers, and their life experiences less broad. Their leisure-time activities tend to be centered around the home, family, and church more than do those of gamblers (see table 4-11).

Military duty, particularly service overseas, also affects gambling. One-and-a-half times more gamblers served in the armed forces than nongamblers. To what extent military service influences gambling, however, has not yet been fully determined because of variables involving the age and sex of gamblers and military personnel.

## Excitement

Excitement plays a large role in motivating people to gamble. When people were asked why they bet on certain games, “excitement” or “to have a good time” were most frequently given as reasons.

Not all games are considered equally exciting, however, and some games are viewed as not exciting at all. Respondents were asked to evaluate the excitement level of 13 different gambling activities on an 8-point scale, and

TABLE 4-10.—MAJOR REASONS WHY NONGAMBLERS  
REPORT THEY DON'T GAMBLE

Specific Reasons	Nongamblers		
	Total reasons %	First reasons %	Probed reasons %
Not interested	44	27	17
It's sinful	40	24	16
Other things to do	38	35	3
Waste of money	37	24	13
It's wrong	34	24	10
Don't know about it	31	27	4
Don't want to lose money	26	16	6
Don't think about it	26	24	2
Don't have the money	25	18	7
Odds against you	23	13	6
Don't disobey the law	21	19	2
Waste of time or effort	16	12	4
It's bad for people	9	*	9
Wasn't raised that way	9	*	9
Don't believe in it	9	1	8
Bad for family	8	1	7
Might get arrested	7	6	1
Not lucky	6	5	1
People get nasty	6	5	1
Causes corruption	5	*	5
It's shoddy	3	2	1
Not available	2	2	*
Too risky	2	0	2
Don't trust the game	1	*	1
Net Reasons			
Activity interest	83	68	15
Money	64	54	10
Moral	48	40	8
Legal	25	22	3
Social	7	6	1
Availability	2	0	2

\*Less than one-half of 1 percent.

NOTE: Respondents chose 1, 2, or 3 reasons from a list of 18 reasons.

the results varied by game and by the respondents' gambling behavior (table 4-12). There was general agreement on which games were the more exciting, and—as with the many other dimensions of gambling discussed up to now—bettors rated gambling as more exciting overall than nonbettors did, while bettors on each game saw that game as more exciting than did nonplayers of that game.

The excitement attributed to any given game appears to be related more to the setting in which the activity takes place than the activity itself. So, too, does the degree of involvement each activity generates, rather than the odds or probability of winning. Social gambling and public commercial forms are considered more exciting than games involving less face-to-face interaction.

By far the most exciting game for bettors and nonbettors alike is horseracing at the track. Numbers is considered the least exciting form by all groups, including numbers players. Out of a possible 8 points, horserace bettors gave on-track horse betting an average rating of 6.59, far more exciting than any other kind. Nongamblers agree.

For horseracing to be exciting, it must be witnessed at the track. Off-track betting was rated as only slightly more exciting than sports cards, and less exciting than dice or lotteries. Off-track bettors rated it 4.35, similar to the rating the lottery receives from lottery players. The sharpest disagreements between players and nonplayers of specific games occur with sports cards and dogracing. Sports card bettors rate it 5.44, against the 1.96 it receives from the total sample. Dogracing receives a 5.50 score from dog track bettors, but only 2.77 from the total sample.

TABLE 4-11.—LEISURE TIME ACTIVITIES  
(AVERAGE NUMBER OF DAYS IN 1974)

	Non-bettors	Bettors	Illegal bettors
Watch television	215	213	206
Read newspapers or magazines	181	227	239
Do nothing, nap, daydream	115	100	102
Read books	92	93	80
Home improvements, gardening	92	79	70
Socialize with friends and relatives	81	85	80
Church or related activities	77	43	37
Knitting, sewing, etc.	59	38	29
Fishing, hunting, camping, etc.	18	29	32
Arts and crafts	18	24	22
Community activities	15	17	24
Active nonteam sports	13	36	34
Attend sports events	13	22	28
Active team sports	9	23	32
Movies or theater	7	17	23
Nightclubs, bars, dancing	6	26	37
Operas, lectures, museums	6	7	10

TABLE 4-11A.—AVERAGE NUMBER OF DAYS  
GAMBLED ON SELECTED EVENTS

	Participants
Bet on a number	71
Bet in a check pool	29
Bet on the horses with a bookie	29
Bet on sports with a bookie	28
Bet on OTB in New York	28
Play cards with friends for money	25
Play bingo	13
Bet on sports cards	10
Bet on miscellaneous events	10
Go to the dog track	10
Go to the horse track in own State	8
Go to a casino	7
Go to jai alai	5

Sports betting with friends is considered one of the more exciting kinds of wagering, while sports bookie betting is rated as one of the least exciting, lending more support to the notion that excitement is derived from the amount of interaction involved in the activity. All five forms of illegal gambling, in fact, fall at the bottom end of the scale, even among bettors. Bettors on specific games give their games at least moderately exciting scores, except for numbers and sports bookie bettors. Even among loyal bettors, those two failed to approach the midpoint on the excitement scale.

**GAMBLING AND CORRUPTION.** Gambling and corruption are often linked in the public mind, as previous surveys have consistently demonstrated. The Commission’s survey reinforced this finding. The survey included separate questions dealing with the following aspects of the subject: police corruption; political corruption; respect for law; the public’s perception of the frequency of fixes in 10 activities that involve gambling; and the impact of legalization of all these aspects.

High school sporting events were seen by the public to be the least corrupt of the 10 events, falling midway between “almost never fixed” and “never fixed” on the scale (table 4-13). Overall, sporting events and charitable and State-run gambling fall at the upper end of the scale (meaning they are rarely perceived as crooked). There is uniform agreement that high school sporting events are fixed least often and that numbers is fixed most often. This is true for nonbettors, bettors in general, illegal bettors, and bettors on specific games. All groups see college sports as slightly less crooked than State lotteries, except for illegal bettors, who view State lotteries as more honest.

Five gambling activities fall below the midpoint of the scale (meaning they are thought to be fixed at least some of the time). Among nonbettors, the three levels of sporting events are judged to be more honest than any form of gambling except bingo. Bettors rate all activities as cleaner than nonbettors do, although in most instances the

differences between bettors’ and nonbettors’ perceptions are not great. Illegal bettors and bettors on specific games are less suspicious about the honesty of each game than are respondents generally.

Dograces are seen as cleaner than horseraces among all groups except nongamblers. While casinos are seen as fixed more often than horseraces by four of the groups, casino bettors see their game as cleaner than horserace bettors see theirs. Dogracing is viewed as fixed at least “sometimes” by most groups, but in this case the difference between dograce bettors and the other groups is dramatic. The former see their game as far cleaner than the other groups see it. Horseracing, dogracing, slot machines, and casinos are seen as fixed at least sometimes by most, and numbers is seen as fixed most often of all.

When respondents were asked how legalization would affect this situation, some interesting patterns emerged (table 4-14). A majority of nongamblers think that legalization would change the frequency of fixes, and most of them believe that legalization would increase, rather than decrease, the number of fixes. Bettors, on the other hand, differ as to what would happen if three different games were legalized. Numbers, which has a crooked reputation even among bettors, is expected to change for the better. Legalization of sports betting, however, is expected to increase the number of fixes, which bettors currently see as infrequent. Off-track betting is not expected to change the number of horserace fixes, an opinion no doubt reflecting the evidently corruption-free operation of OTB in New York State.

### Legalization Attitudes and Gambling Behavior

The presence of legal gambling and, particularly, the level of legalization within a State are important influences on gambling attitudes and behavior. Although 80 percent

TABLE 4-12.—EXCITEMENT RATINGS FOR 13 GAMBLING ACTIVITIES

Excitement level of	Total sample	Non-bettors	Bettors	Illegal bettors	Bettors of specific games
Horses at track	3.98	2.59	4.83	5.60	6.59
Cards with friends	3.74	2.44	4.53	5.30	N/A
Gambling casinos	3.41	2.06	4.24	5.02	5.80
Slot machines	3.39	2.27	4.08	4.35	5.26
Bingo	3.19	2.55	3.58	3.65	5.08
Sports with friends	3.11	2.07	3.75	4.66	5.01
Lottery	2.80	2.05	3.26	3.52	4.11
Dog tracks	2.77	2.06	3.21	3.50	5.50
Dice	2.54	1.90	2.94	3.89	N/A
Horses off-track	2.06	1.63	2.32	3.33	4.35
Sports cards	1.96	1.59	2.19	3.36	5.44
Sports with bookie	1.74	1.47	1.90	2.88	3.87
Numbers	1.63	1.47	1.74	2.18	3.52

Scale: 1 (Not at all exciting) to 8 (Very exciting).

TABLE 4-13.—PERCEPTIONS OF FIXING (MEANS ORDERED FROM LEAST TO MOST)

	Total sample	Non-bettors	Bettors	Illegal bettors	Bettors on specific games
High school sports	4.43	4.30	4.49	4.46	N/A
Bingo	3.88	3.58	4.01	3.92	4.24
College sports	3.87	3.73	3.94	3.89	4.00
Lottery	3.55	3.00	3.81	4.14	4.37
Professional sports	3.38	3.24	3.45	3.43	3.56
Horse races	2.89	2.69	2.99	2.96	2.94
Dog races	2.85	2.75	2.90	3.17	3.65
Slot machines	2.35	2.17	2.44	2.41	N/A
Casinos	2.32	2.13	2.41	2.54	3.05
Numbers	2.02	1.92	2.07	2.34	2.64

1 = Fixed most of time.      2 = Fixed pretty often.      3 = Fixed sometimes.  
 4 = Almost never fixed.      5 = Never fixed.

TABLE 4-14.—PERCEPTION OF FIXING AFTER LEGALIZATION

	Random subset of bettors			Nonbettors gambling in general
	OTB %	Numbers %	Sports %	%
Legalization will lead to:				
Change	36	55	54	53
More	64	45	61	68
Less	36	55	39	32
No change	53	47	42	23
No answer	17	4	4	24

of the population nationwide favors the legalization of some form of gambling, no form receives majority support for legalization in States where it is not already legal (or believed not to be). Once it is legalized and functioning, however, legal gambling receives overwhelming support for its continued operation (table 4-15). Further, forms of gambling that are already legal in several States draw proportionately more support for legalization in States where they are not legal than do forms that are legal on a more restricted basis. For example, horseracing, lotteries, and bingo are favored for legalization by nearly half of those living in States in which they are not legal (47 percent, 47 percent, 48 percent respectively). Dogracing, which is legal in nine States, is favored by 36 percent of the rest of the population; and sports books—legal in only one State—are favored by only 20 percent.

The cumulative effect of multiple legal forms of gambling on attitudes is most visible when reactions toward legalization or toward a currently legal operation are grouped: In States with no legal gambling, 40 percent want to keep things that way. In States with three forms of legal gambling, only 5 percent think no form of gambling should be legal. Further, in States with more than one

form of gambling, people have positive attitudes toward more types of games and want to see more than one additional legal type (table 4-16).

Between nonbettors and bettors the distinction is similarly clear: Forty-five percent of the nonbettors and 4 percent of the bettors think no form should be legal. A majority of nonbettors think no form, or at most one form, should be legal, while 48 percent of the bettors think seven or more types should be legal.

Apparently, additional legalization also increases overall gambling participation, as well as increasing favorable attitudes toward more types of games (table 4-17). In States with different numbers of games, participation rates

TABLE 4-15.—COMPONENTS OF POSITIVE ATTITUDES TOWARD LEGALIZATION

	Total positive toward legalization %	Desire to continue an already legal facility <sup>a</sup> %	Desire to make an illegal activity legal %
Bingo	68	82	48
Off-Track Betting (N.Y.)	67	69	—
Horse Tracks	62	73	47
State Lotteries	61	81	47
Picket	60	91	—
Dog Tracks	49	72	44
Slot Machines	40	53	40
Gambling Casinos	40	65	40
Off-Track Betting	38	65	36
Sports Cards or Sheets	32	63	32
Pro Sports Betting	31	60	30
Numbers, Bolitas, Policy	22	36	22
College Sports Betting	22	68	22
Bookie Sports Betting	20	42	20
H.S. Sports Betting	16	62	16

<sup>a</sup>This is a perceived legality which is incorrect in some cases.



increase steadily and sharply as the number of legal types of gambling increases. Social betting more than doubles from 35 percent in States with no legal games to 72 percent in States with three legal types; the illegal gambling rate more than doubles, from 9 percent to 22 percent; and commercial gambling increases by 43 percent, from 24 percent to 67 percent. Further, the percentage of people who gamble exclusively with friends steadily decreases across these groups from 34 percent to 11 percent. Even those who demonstrated unfavorable attitudes toward gambling gamble in greater proportions in States that have higher levels of legalization, and they also gamble illegally as well as legally in greater proportions. These trends remain even after holding other relevant variables constant.

These findings have relevance for State gambling policy. As more forms are legalized, States should expect overall increases in gambling behavior: They should also be prepared for possible increases in illegal gambling behavior as well. Legalization may not be a completely effective strategy in competing with illegal games, and may in fact encourage the growth of illegal markets by encouraging higher levels of gambling generally. Legalization increases public exposure to gambling and legitimizes the gambling activity; exposure to more types of gambling reduces negative attitudes toward other types of gambling. Both factors create favorable predispositions toward gambling and thereby encourage wider participation.

#### PERCEIVED CONSEQUENCES OF LEGALIZATION.

Gamblers see the different forms of legal gambling as having different consequences for society. The different types of gambling are seen as having both positive and negative effects, although each type shows a different set of perceived strengths and weaknesses. Nongamblers were questioned about "gambling" and saw few positive effects.

Majorities of bettors see the five major types of gambling as creating many more jobs (table 4-18). Almost no one believes that racketeers would be connected with OTB, but they believe that children would be encouraged to gamble on OTB and that people would miss work because of gambling on OTB. Lotteries are seen mainly as a revenue-raising device: Sixty-five percent stated that lotteries would yield a "lot more money to run the

government." Nearly one-third, however, believe that racketeers would be connected with a lottery; but almost no one believes that lotteries would cause people to work less because they are gambling. More people believe that lotteries provide "more of a chance for the common man to get rich" than any other form of gambling.

Given the wide circulation of statements by law enforcement agencies concerning organized crime involvement in illegal numbers operations, it is not surprising that people see legalized numbers as depriving organized crime of money more than any other type and generating a great deal of revenue. As with lotteries, relatively few believe people will miss work because of numbers gambling; but unlike lottery statistics, and similar to the casino findings, people think that legal numbers would entice many into gambling more than they can afford, and that it would attract racketeers.

Casino gambling is viewed as potentially the most dangerous form of gambling—the only one where a majority of bettors (61 percent) think that legalization would attract racketeers. Bettors feel that legal casinos would be less effective against organized crime than either legal lotteries or legal numbers. Three-quarters believe casinos would encourage people to gamble excessively, and two-thirds believe children would be influenced to gamble. On the positive side, people think casinos would generate substantial revenue. They also see casinos as creating more jobs than numbers, lotteries, or sports betting, but fewer than OTB would.

Sports betting, popularly thought to be associated with "organized crime," is seen by bettors as having little impact on current organized crime revenue and is not viewed as likely to attract racketeers. They also believe that legal sports betting—more than any other kind—would induce people to miss work because of gambling.

Nongamblers see fewer positive effects of legalizing gambling and more negative consequences than do bettors. Majorities of the nonbettors see all four negative consequences under legalization, with 81 percent believing both that people will gamble more than they can afford and that children would be encouraged to gamble.

With respect to corruption, nongamblers, unlike

TABLE 4-16.—GAMBLING FAVORABILITY AND GAMBLING FACILITIES

	Total sample %	No legal facilities %	State laws			1974 Participation	
			One legal facility %	Two legal facilities %	Three legal facilities %	Nonbetting %	Betting %
Favorable to Legalizing:							
Nothing	20	40	21	10	5	45	4
One to Three Games	22	22	24	21	18	27	20
Four to Six Games	23	16	19	30	27	13	28
Seven or More Games	35	22	36	39	50	15	48
	100	100	100	100	100	100	100

Based on the questions: "... which of these are legal in your State now?" "Any others?" and if legal, "Would you like to see continued or would you like to see it abolished?" and if not legal "... How do you feel about making legal?" "Are you definitely in favor of legalizing it, do you tend to be in favor of legalizing it, do you tend to be against legalizing it, or are you definitely against legalizing it?"

TABLE 4-17.—GAMBLING PARTICIPATION BY NUMBER OF LEGAL FACILITIES IN STATE

	Total U.S. %	No legal facili- ties %	One legal facil- ity %	Two legal facili- ties %	Three legal facili- ties %
Any Gambling	61	41	58	71	81
Legal Commercial					
Gambling	44	24	36	60	67
Only	16	13	14	20	7
Combined	84	87	86	80	93
Illegal Gambling	11	9	8	12	22
Only	1	0	1	1	1
Combined	99	100	99	99	99
Friend Gambling	50	35	55	54	72
Only	26	34	20	19	11
Combined	74	66	80	81	89

gamblers, predict that legalization would lead to changes in the current situation: They are slightly more inclined to see "less respect for the law" as a result of legalization, although nearly as many see no change (table 4-19). Forty percent predict there will be more political corruption, and 42 percent see legalization as leading to more police corruption. In these instances, nongamblers differ from gamblers most clearly; only among nongamblers do more people predict change in these dimensions and all three predictions involve undesirable change.

Among gamblers, legalization of OTB, numbers, and sports betting is expected to produce changes in the amount of corruption, although more believe there will be no change than agree on the direction of change. Strong majorities of bettors believe that the legalization of each

of the five types would not change respect for the law. They see sports betting and off-track betting as producing more political corruption and police corruption than the other three types. Curiously, nearly one-fourth see lotteries as causing more political corruption, but not more police corruption; and legal numbers as leading to more political corruption while either reducing or leaving unchanged the amount of police corruption.

State-level regulation is preferred to local or Federal regulation by gamblers and nongamblers alike (table 4-20). While nongamblers think that "gambling" should be run by private business rather than by government employees, gamblers think government and business should operate different forms: OTB, casinos, and, to a lesser extent, sports betting should be run by business, but numbers should be run and operated by the State government. Only in the case of OTB did more than one-third believe control should be in the hands of local government. These findings reflect the current operation of commercial gambling in the United States. Bettors believe casinos should be run as they are in Nevada, and numbers should be run as a State lottery. Just as broad-based support for continuation of local betting follows legalization, preference for a certain mode of operation follows implementation of that mode and becomes generalized.

## Compulsive Gambling

Estimates of the number of compulsive gamblers in the United States are few and of doubtful authority. The most commonly cited one is that of Gamblers Anonymous which claims that there are between 6 million and 9 million. The organization cites no basis for this figure; but in the absence of any more credible estimate it has achieved wide currency. No estimate exists of the extent to which widespread legalization would affect this number.

TABLE 4-18.—PERCENT OF RESPONDENTS IN AGREEMENT WITH EIGHT POSSIBLE CONSEQUENCES OF LEGALIZING EACH OF FIVE DIFFERENT GAMES

	OTB %	Random subsets of bettors				Nonbettors Gambling in general %
		Casinos %	Lotteries %	Numbers %	Sports %	
More jobs for people	71	69	57	64	63	41
A lot more money to run the government	53	66	65	58	67	38
Less money for organized crime	33	45	47	55	27	33
More of a chance for the common man to get rich	49	18	56	30	48	14
More people working less because they are gambling	63	43	13	25	67	57
More of a chance that children will be influenced to gamble	60	66	48	61	53	82
More racketeers connected to it	13	61	31	46	22	71
More people gambling more than they can afford	55	76	42	62	59	81

TABLE 4-19.—BELIEFS ABOUT THE EFFECTS OF LEGALIZATION ON CORRUPTION

	OTB %	Casinos %	Random subsets of bettors		Sports %	Nonbettors Gambling in general %
			Lotteries %	Numbers %		
Respect for Law						
More	17	17	19	18	15	13
Less	21	20	7	14	15	38
No Change	57	62	70	64	70	36
Police Corruption						
More	22	26	8	21	26	42
Less	21	16	15	23	23	15
No Change	49	53	71	51	50	27
Political Corruption						
More	36	32	24	30	37	40
Less	11	10	9	18	10	11
No Change	46	51	57	42	47	28

NOTE: Where responses do not add to 100 percent the remainder is no answer.

TABLE 4-20.—OPERATION AND REGULATION OF GAMES IF THEY BECOME LEGAL

	OTB		Casinos		Numbers		Sports		Gamblers in general	
	% of total sample	% of sample answering	% of total sample	% of sample answering	% of total sample	% of sample answering	% of total sample	% of sample answering	% of non- bettors	% of non- bettors answering
Should be operated by										
Government Employees	30	35	28	34	42	65	42	47	24	42
Private Businessmen	55	65	54	66	38	35	47	53	33	58
Nonresponsive answers	15		18		20		11		43	
Should be regulated by*										
Federal Government	18	18	15	15	19	26	21	22	21	33
State Government	42	43	58	58	34	48	59	61	27	42
Local Government	37	37	17	17	19	26	16	17	15	24
Don't Care	3	2	10	10	—	—	—	—	—	—
Nonresponsive answers	—	—	—	—	38	—	4	—	37	1

\*Responses of lifetime participants only for nonbettor column.

Among many other things, the Commission's survey was designed to produce a data-based estimate of the number of compulsive gamblers and a projection of how that number might be affected by legalization of most gambling, as is now the case in Nevada. To do so, the survey developed a personality-oriented section of the questionnaire geared to elicit responses that would indicate whether an individual in the survey was likely to become a compulsive gambler. The questions were chosen from a questionnaire distributed to a group of 274 compulsive gamblers and to 239 members of Protestant churches. From the 119 items in that questionnaire, 18 were selected.

These 18 items were then used to identify which persons in the survey appeared to have the same characteristics as compulsive gamblers. A clinical analysis was conducted of the responses of those individuals, in order to sort out those whose reported betting also indicated a probable gambling problem.

This analysis was based on observations recorded by

the interviewer at the end of each interview, and on the betting reported by the respondent. As a result of this clinical examination, it was estimated that 0.77 percent of the national sample could be classified as "probable" compulsive gamblers, with another 2.33 percent as "potential" compulsive gamblers. A projection of these figures indicates that there are approximately 1.1 million compulsive gamblers in the Nation. The figures are significantly higher for men than women: Among men, 1.1 percent were classified as probable compulsive gamblers and 2.7 percent as potential compulsive gamblers; for women the comparable figures were 0.2 percent and 2 percent respectively (see table 4-21).

The University of Michigan survey team believes, and the Commission concurs, that these estimates should be treated as suggestive rather than conclusive. Research on compulsive gambling is so meager that it is impossible to be sure that one has identified the personality disorder correctly. Because of limitations of time and resources on the project, the approach used in developing the estimate

TABLE 4-21.—CLASSIFICATION AS COMPULSIVE GAMBLERS AND POTENTIAL COMPULSIVE GAMBLERS BY SEX (NATIONAL AND NEVADA SAMPLES)\*

	Potential compulsive gamblers		Probable compulsive gamblers	
	Nationally %	Nevada %	Nationally %	Nevada %
Men	2.7	3.8	1.1	3.3
Women	2.0	1.1	0.5	2.0
Total	2.33	2.35	0.77	2.62

\*The percentages are based on small samples, and the results should be interpreted as order effects rather than in terms of absolute percentages.

was the only feasible one. Nonetheless, it should be recognized that although the characteristics sought by the questionnaire are plausibly associated with the personality type usually described as a "compulsive gambler," they may not distinguish sharply enough between this disorder and others. On the other hand, the survey results do strongly suggest that there is a significant number of persons for whom heavy gambling may be a problem.

The same set of criteria was used for the 296 Nevada respondents. On the basis of that sample, it was projected that 2.62 percent of the Nevada population could be classified as probable compulsive gamblers, with another 2.35 percent in the potential category. Again, the projections differed markedly between the sexes: For men,

3.3 percent were classified as probables, with another 3.8 percent classified as potentials, compared with 2 percent and 1.1 percent, respectively, for women.

Not only is the incidence of compulsive gambling higher in Nevada than in the national sample, but the ratio of probables to potentials is as well. This is consistent with the hypothesis that widespread availability of gambling in a legal form leads a portion of those classified as potential compulsive gamblers to actualize their potential compulsion. This effect is more pronounced for women than for men and is also consistent with the observation that women are more easily accepted into legal gambling environments than into illegal operations, where the player frequently has to establish a credit rating; this may be a difficult matter for women who are seen as dependent on their husbands financially.

The findings concerning Nevada are tentative. Because the sample is small, the difference between the national and the Nevada estimates lies within the limits of sampling error. It also may be the case that, although an effort was made to screen out those individuals who moved to Nevada specifically because gambling was more readily available there, the Nevada population includes a disproportionate number of gambling-prone persons.

## Kinds of Betting

Table 4-22 shows a demographic breakdown of gambling participation by kind of game. Survey results pertaining to individual games are contained in chapter 5.

TABLE 4-22.—DEMOGRAPHIC BREAKDOWN OF GAMBLING PARTICIPANTS

	Horses, track %	Casinos %	Legal			Sports books %	Illegal		Sports cards %
			Bingo %	Lotteries %	Dogs %		Horse books %	Numbers %	
Region									
Northeast	20.1	8.7	25.4	55.3	4.9	3.0	5.6	8.1	4.7
North Central	11.7	4.9	22.3	31.7	4.1	3.1	1.7	2.2	4.4
South	9.5	1.7	11.2	6.0	3.2	1.0	1.5	1.1	1.8
West	16.1	31.1	17.4	3.0	3.9	0.1	0.8	0.9	1.7
Income									
Under \$5,000	6.5	4.1	8.6	10.3	1.7	0.1	0.6	1.2	0.2
\$ 5,000-\$10,000	11.9	8.1	18.8	15.1	2.9	1.3	1.9	3.6	1.8
\$10,000-\$15,000	10.1	6.2	20.3	24.0	4.9	1.2	2.7	2.7	2.9
\$15,000-\$20,000	16.3	12.3	21.6	31.0	2.9	2.6	3.1	3.4	4.9
\$20,000-\$30,000	19.1	12.1	22.1	35.0	4.9	2.6	2.2	2.9	5.7
\$30,000 and over	21.6	20.6	17.2	32.1	5.1	4.5	3.5	4.8	4.0
No answer	17.1	6.5	19.8	23.8	7.4	2.8	2.5	2.9	2.4
Education									
Grade school	7.7	4.1	15.3	18.0	1.6	0.9	1.8	2.6	2.0
High school	15.3	8.4	22.5	26.5	4.4	1.8	3.7	4.8	3.1
Some college	14.0	14.7	21.1	25.5	5.0	3.0	2.2	2.8	4.3
College degree	23.0	15.6	15.6	31.1	6.4	2.7	1.3	1.1	4.3
No answer	12.9	9.0	9.0	2.3	0.0	0.0	0.0	0.0	0.0

TABLE 4-22.—DEMOGRAPHIC BREAKDOWN OF GAMBLING PARTICIPANTS *continued*

		Legal					Illegal		
	Horses, track %	Casinos %	Bingo %	Lotteries %	Dogs %	Sports books %	Horse books %	Numbers %	Sports cards %
National Origin									
African	17.5	5.2	23.3	26.8	5.1	0.2	1.9	6.1	0.4
Spanish-speaking	24.7	21.2	15.2	16.6	3.6	1.5	5.6	10.4	2.3
Italian	26.4	10.1	27.5	46.2	9.0	4.6	9.6	11.5	7.3
Other	12.8	9.2	18.1	23.1	3.6	1.9	1.9	2.1	3.1
Religion									
Jewish	28.1	23.0	11.4	51.6	10.0	6.4	3.0	4.2	2.8
Catholic	19.6	10.1	28.8	38.5	3.9	2.7	3.8	4.7	5.2
Bible-oriented sects	7.0	4.0	9.1	5.0	0.4	1.7	1.8	1.7	1.4
Other	11.9	9.7	16.4	20.4	4.4	1.4	1.8	2.4	2.6
Age									
Under 25	14.4	6.2	26.6	17.1	6.0	1.9	3.2	3.9	3.9
25-44 years	17.4	11.7	21.0	30.0	5.0	2.5	2.9	3.7	4.3
45-64 years	12.7	10.2	16.2	24.7	2.5	1.9	2.1	2.6	2.5
Over 65 years	3.2	3.5	8.3	9.5	1.7	0.1	0.5	0.4	0.1
Distance From 25 Largest Cities									
Less than 25 miles	17.3	12.0	16.3	27.7	3.7	2.0	3.2	6.7	3.8
25-50 miles	21.5	13.3	20.8	39.3	5.3	2.8	2.5	2.9	4.0
Over 50 miles	10.0	7.1	19.7	18.8	3.8	1.7	1.8	0.8	2.6
Sex									
Male	15.7	8.8	16.0	28.6	6.0	3.7	4.2	3.9	6.7
Female	12.0	10.2	21.1	20.3	2.1	0.3	0.8	2.2	0.1
Total Sample	14.8	9.4	18.7	24.1	3.9	1.9	2.4	3.0	3.0



# CHAPTER 5. LEGAL GAMBLING INDUSTRIES

## INTRODUCTION

In 1960, Americans wagered about \$5 billion through legal commercial channels. By 1974, this figure had grown to more than \$17 billion, an increase of about 340 percent. This phenomenal growth in legal gambling has taken two forms: Existing legal industries have undergone substantial expansion, and new forms of legal gambling have been created. During this 15-year period, for example, six additional States established parimutuel horseracing and the total number of horseracing dates increased from 5,000 to 12,000. Nevada's casino industry also underwent significant growth; gross taxable casino revenue increased almost 600 percent, from less than \$200 million in 1960 to more than \$1 billion in 1974. In 1964, New Hampshire became the first of 13 States so far to establish a State-operated lottery; in 1971, New York legalized the Nation's first parimutuel off-track betting system; and in 1974, New Jersey added still another industry to the gambling field by establishing the first legal numbers game. Today, the growth in legal gambling shows no signs of abating and may even be accelerating, as additional States compete in the gambling arena with an expanding array of "bigger and better" games of chance.

This chapter provides an in-depth examination of the five principal forms of legal gambling available today: casinos, on-track parimutuel wagering, off-track betting, lotteries (including numbers), and bingo. Each section contains a brief history of the development of the game, its revenue and regulatory aspects, problems that the industry faces, and the findings of the Commission's

gambling survey. Each section concludes with the Commission's recommendations for change in the structure, organization, and operation of the games; an appendix to this volume contains model regulations for each game, as well as a general State gaming statute.

## Legal Gambling Considerations

The following table compares the different types of gambling in terms of revenue for government, regressivity as a form of taxation, ability to compete with illegal gambling, corruption problems, impact on gambling behavior, and rate of taxation. Games in each category are rated as either low, medium, or high; ratings are based on published information where available and on the results of the Commission's gambling survey (see chapter 4). With respect to lotteries, bingo, racing, OTB, and casinos, the ratings reflect the current situation; with respect to the illegal games, an attempt was made to predict what would result if legalization were to occur. As the several question marks on the table indicate, sufficient data are not available in some cases to make definitive judgments. This is particularly true in projections regarding the three principal forms of illegal gambling—numbers, sports cards, and single-event sports betting. In all cases, the impact of a legal gambling enterprise will depend largely on how, by whom, and for what purpose it is operated.

## LEGAL GAMBLING CONSIDERATIONS

	Revenue for government*	Regressivity*	Ability to compete with illegal gambling*	Corruption problems with legal form*	Impact on gambling behavior*	Tax rate*
Lotteries	Medium	Medium	Low	Low	Medium	High
Numbers	High	High	High	Low	High(?)	High
Bingo	Low(?)	Medium	Low	Medium	Low	Low
Racing (Horse and Dog)	High	Low	Low	Medium	High	High
OTB	High	Low	Medium	Low	High	High
Casinos	Low	Low(?)	Low	High	High	Low
Sports Cards	Low-Medium	High	?	?	Low	High
Single-Event Sports Betting	Low	Low(?)	?	?	?	Low

\*Relative to other forms of gambling.

# CASINOS

Within the United States, casino gambling is legal only in Nevada, an expansive arid State whose entire population would fit comfortably into a city the size of Columbus, Ohio. Nevada has had a 45-year monopoly on an industry that is variously deplored, admired, and envied by its sister States. Its colorful gambling history has been chronicled in numerous books, films, and newspaper and magazine articles. All have contributed to the industry's glamour and mystique, but few have examined it objectively. Rumor, innuendo, and exaggeration have combined to create a folklore of Nevada gambling that is based as much on conjecture and assumption as it is on historical fact and current reality. Much of the speculation has centered on the alleged ties between the casinos and members of organized crime, profit skimming by casinos to avoid taxation, the link between gambling and crime rates in Nevada, the profitability of casinos, and the effectiveness of State regulation.

In recent years, a number of States have taken an increased interest in Nevada's brand of casino gambling. Some gambling proponents see casinos as the answer to their State's revenue problems. Others merely see no valid moral, social, or economic reasons why other States should not follow Nevada's example. Opponents of casino gambling point to the alleged ties to the underworld and the higher crime rates in Nevada's principal gambling cities as reason enough to prevent the spread of the casino gambling phenomenon.

The National Gambling Commission has studied casino gambling in Nevada in an attempt to separate fact from rumor and to present reliable, up-to-date information that State legislators, law enforcement officials, and the general public may use in forming their own opinions on the subject. The Commission held 4 days of hearings in Nevada during which time it heard testimony from 38 witnesses including casino industry spokesmen, law enforcement and regulatory officials, elected Federal and State representatives, religious and educational leaders, and members of the press and private industry in Nevada. In addition, the Commission took testimony from officials in the Commonwealth of Puerto Rico, Great Britain, and the Bahamas on their experiences with legalized casino

gambling. Through these hearings, combined with independent research, the Commission has reached a number of conclusions about casino gambling that run contrary to many of the traditional viewpoints. In brief, the Commission has found that:

1. Although organized crime once was a significant factor in some Nevada casinos, its influence has declined considerably and consistently during the past 10 years. In comparison with the situation 15 years ago, the presence of organized crime in Nevada today is negligible.

2. Stringent accounting regulations and sound internal control mechanisms effectively prevent most skimming of casino profits by owners. Theft by casino employees and customers occurs more frequently.

3. Nevada's gambling cannot be held solely, or even primarily, responsible for the higher-than-average crime rates in Reno and Las Vegas. Gambling is one of the many factors that affect crime rates in these cities.

4. While successful casinos provide a high rate of return on investment, many are only marginally profitable, and a few operate at a loss.

5. Although gambling taxes and fees constitute a significant percentage of Nevada's State income, both New York and California earn more from taxes on parimutuel wagering alone than Nevada collects through assessments on casinos. In terms of total State revenue from all forms of gambling (including lotteries), Nevada ranks only sixth.

6. It has taken Nevada many years to develop and refine its system of casino regulation, a process that is still ongoing. On the whole, State regulations are sufficiently stringent and enforcement is effective.

The material that follows presents an overview of Nevada's legal casino industry, including financial and economic considerations; local, State, and Federal regulation; internal operation and control; and a brief historical review of the evolution of casino gambling from a casual pastime into a billion-dollar industry. It also contains a review of legal casino gambling in the Commonwealth of Puerto Rico, the only American jurisdiction outside of Nevada where casinos are legal; in Great Britain; and in the Bahamas.

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## HISTORICAL PERSPECTIVE<sup>1</sup>

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In 1849, the discovery of gold in California caused the westward migration of thousands of prospectors eager to gamble on the possibility of striking it rich. Geographically, Nevada was the final obstacle between the prospector and the fulfillment of his dream. Discovery of the Comstock Lode in 1859 and gold strikes in the Tonopah and Goldfield areas in the early 1900's boosted Nevada's population considerably. In the dusty little mining towns,

gambling was the principal form of recreation for male members of the community.

The first official restrictions on gambling in Nevada came in 1861, when the Nevada Territory was formed. Running a gambling operation was made a felony, and betting a misdemeanor. As an added incentive to law enforcement officials, the law awarded district attorneys \$100 for every gambling conviction they secured. Other legislation



enacted in the 1860's first decreased the penalties for illegal gambling and then legalized various gambling activities through a licensing scheme.

Gambling flourished in the back rooms (it was not permitted in front rooms) of saloons and gambling halls as long as the gold and silver mines remained productive. Roulette, dice games, poker, monte, and faro were the most popular games. Gambling was considered a respectable pastime and gambling operators for the most part were regarded as respectable businessmen. Opposition to gambling was strongest in the nonmining towns. The women of Nevada—uniformly excluded from all gambling activities—were often at the forefront of the antigambling movement. In 1909, the State legislature passed a law making it a felony to operate a gambling game and authorizing police to break down doors, and seize and destroy any gambling equipment found on the premises.

It soon became apparent, however, that the tough new antigambling law was not having the effect its sponsors had intended. The games were driven underground and the State was deprived of the license fees it had previously collected. The law attracted underworld gamblers skilled in the arts of cheating and bribing public officials. In 1913, the legislature reiterated its strong antigambling stance. Two years later, gambling on a restricted scale was once more permitted.

This legislative seesawing had no effect on the illegal games, which increased in size and number each year. One historian summed up the situation as follows:

This patchwork law remained in force for sixteen years, during which time it was by all accounts either ignored completely or so feebly enforced as to be worse than useless. Its fatal defect lay in the fact that the games allowed in the licensed houses had little appeal to the gambling public, which accordingly shunned them and patronized instead the numerous undercover resorts that promptly sprang up. As a result, state and local revenues from licenses fees declined year by year while the illegal houses multiplied.<sup>2</sup>

The pendulum began to swing in the direction of legalization. Even stronger than its desire to crush the menace of illegal gambling was the State's need to raise funds during the depression. Despite persistent opposition from the clergy and various reform and women's groups, the Nevada legislature in 1931 finally passed a new "wide open gambling bill" that legalized all forms of casino gambling.

Passage of the 1931 law did not signal the hurried construction of the enormous casino resorts that characterize Nevada gambling today. More than a decade passed before gangster Benjamin "Bugsy" Siegal, member of Murder, Inc., built the gaudy prototype of the modern Las Vegas Strip casino.

The 1931 law enabled the operators of previously illegal gaming rooms to rent ground-level storefronts. Otherwise gambling proceeded with little change. Funds that had been used to buy protection now went to pay the modest license fees and taxes.

County sheriffs were responsible for administering the law. Five-member boards—three county commissioners, the district attorney, and the sheriff—had license-granting authority. There was no enforcement at the State level.

In 1945, the State legislature passed an amendment that required applicants to obtain licenses from the State Tax Commission as well as from the county boards. The Tax Commission then proceeded to adopt stricter licensing requirements. The 1945 law also imposed on gambling operators a State tax of 1 percent of gross earnings. Additional amendments in 1947 and 1949 further extended the Tax Commission's authority in the area of enforcement and increased the tax rate to 2 percent of gross earnings. Today, gross gambling revenue is taxed at a graduated rate ranging from 3 percent to 5.5 percent. Altogether, gambling operations are now subject to five different types of State-level taxation.

It was in Reno that gambling first acquired the aura of genuine respectability. In 1937, Raymond I. Smith opened Harolds Club. Smith replaced the smoky drabness of the traditional casino environment with bright lights and colorful adornments. He lowered the stakes to attract small bettors and provided transportation home for players who went broke.

William F. Harrah went even further. In 1946, he opened the club that bears his name next door to Harolds Club. He commissioned a research firm to develop a profile of his most likely customers. The results showed that the elderly and low-income people might become eager gamblers in the proper setting. Harrah gave them the opportunity by providing bus service to and from 31 cities. Harrah also installed glass walls so that anyone walking by could see the action inside, creating the impression that the establishment had nothing to hide. Later he replaced the glass window with an "air curtain" so that the tempting sounds of clinking silver dollars and shouts of "Jackpot" could filter out onto the street.

The phenomenal growth of gambling in Las Vegas can be traced in large measure to the activities of Bugsy Siegal. Most Las Vegans knew Siegal as a personable, enterprising young sportsman. His nefarious background and ties to the underworld became known only after his death. It was Siegal's ambition to build a luxurious complex that would offer gambling, recreation, entertainment, and other services catering to the area's increasing tourist trade. Siegal borrowed money from his underworld colleagues to build the \$5 million Flamingo Hotel along Highway 91, just outside the city limits. Long delays in construction, expensive cost overruns, and various other transgressions angered Siegal's creditors, who engineered his gangland-style execution in 1947.

The news of Siegal's death and the ensuing revelations about his criminal career generated enormous publicity around the country and even appeared to attract additional business for the city's gambling halls. In the next few years, the Strip acquired several new hotel/casinos that eclipsed the Flamingo in size, star-studded openings, and opulent decor. Las Vegas was well on its way to becoming the country's gambling mecca.

The financial success of the Flamingo attracted additional underworld figures from such cities as New York, Detroit, Cleveland, and from resorts like Newport-Covington, Ky.

In 1950, the Kefauver Committee (Special Senate Committee to Investigate Organized Crime in Interstate Commerce) began its investigation of organized crime, and one aspect of its inquiry centered on Nevada gamblers. The committee's summary report contained this assessment of the situation in Nevada:

It seems clear that too many of the men running gambling operations in Nevada are either members of existing out-of-state gambling syndicates or have histories of close association with the underworld characters who operate these syndicates.

It had become evident that the Nevada Tax Commission, even with its strengthened licensing and enforcement powers, had proved unable to keep undesirables from infiltrating the gambling business. At stake was the future of legalized gambling in the State. If hoodlum control were not checked, Nevadans—or the Federal Government—could easily take steps to terminate the 1931 experiment.<sup>3</sup>

Following the Kefauver report, the State of Nevada and the Federal Government intensified their efforts to uncover and eradicate hidden criminal interests in Nevada gambling operations.

In 1955, a Gaming Control Board was created to act as the enforcement and investigative unit of the Tax Commission. Four years later, Governor Grant Sawyer called for a complete revamping of the gambling control machinery. A five-man Nevada Gaming Commission was created and a State Gaming Control Board was established as the Commission's audit, investigative, and enforcement arm. The new Gaming Commission was given greatly expanded investigative and regulatory powers, all

designed to insure that "criminal elements, mobs, or syndicates have neither interest in nor control of existing businesses." In 1961, the Nevada legislature created the Gaming Policy Board, an advisory body established to give the Governor a greater voice in gambling matters.

Although few would claim that the influence of organized crime has been completely eradicated in Nevada, most authorities agree that at least it has been significantly reduced. During the 1960's, syndicate control over casino operations began to be replaced by large corporate investments in gambling properties. In the past 10 years alone, more than half of the major casino hotels have changed ownership and many new hotels have been built, a situation the Gaming Commission believes has resulted in the gradual weeding out of undesirables. Organizations such as Del Webb Corp., Continental Connector (an eastern electronics firm), and Lum's, Inc. (a Florida-based restaurant chain) invested in some of the Strip's largest casino/hotels including the Sahara, Thunderbird, Dunes, and Caesar's Palace. Among the new hotels built were the Las Vegas Hilton and MGM's Grand Hotel. The latter, which opened in December 1973, bills itself as the "world's largest resort hotel." It has 2,100 rooms, 6 restaurants, 3 show lounges, and a casino larger than a football field.

Among the largest corporate investments in Las Vegas were those made by Howard Hughes. In 1967, Hughes bought the Desert Inn, thereby initiating his collection of Las Vegas properties, which eventually included the Sands, Landmark, Frontier, Castaways, and Silver Slipper. In Reno he bought Harolds Club from its original owners, the Smith family. His nongambling acquisitions in the State included mining claims, an aviation facility for private and charter planes, and a television station. In a short time Hughes had become the State's largest employer.

## THE INDUSTRY TODAY

With much of the country experiencing economic adversity, Nevada stands almost alone in terms of fiscal soundness. The State has felt only minimally the effects of recession and high unemployment and anticipates a fiscal year 1975 budget surplus of \$23 million, or about 10 percent of its current operating budget. This phenomenon may seem even more remarkable in view of the fact that Nevada has no State income tax on either individuals or businesses.

At the core of Nevada's economic success is its thriving gambling industry and related tourist enterprises. In 1975, for the second time, the gaming<sup>4</sup> industry's gross taxable revenue exceeded \$1 billion.<sup>5</sup> This represented a 12.2 percent increase over 1974 and a 392 percent increase over the 12-year period from 1964 to 1975 (see table 5-1).

TABLE 5-1.—GROSS TAXABLE GAMING REVENUE,\*  
STATE OF NEVADA

Year	Taxable revenue	Percent change
1964	\$ 292,828,078	—
**	**	**
1970	575,505,370	—
1971	633,338,317	+10.2
1972	731,170,284	+15.4
1973	875,899,724	+19.8
1974	1,004,361,692	+14.7
1975	1,126,415,410	+12.2
	Percent change 1964-1975	+385

\*The total of all sums received as winnings less only the total of all sums paid out as losses (before operating expenses).  
Source: Nevada Gaming Control Board.

TABLE 5-2.—DIRECT LEVIES PAID BY THE GAMING INDUSTRY, FISCAL YEARS 1964-1975 (in millions)

Year	Total	Federal <sup>1</sup>		State		County		Other <sup>2</sup>	
		Amount	% of total	Amount	% of total	Amount	% of total	Amount	% of total
1964	\$27.2	\$ 7.1	26.1	\$14.5	53.3	\$ 3.9	14.3	\$1.7	6.3
1965	27.6	6.7	24.3	15.1	54.7	4.1	14.8	1.7	6.2
1966	33.1	7.8	23.6	18.8 <sup>3</sup>	56.8	4.7	14.2	1.8	5.4
1967	40.2	9.0	22.4	23.9	59.4	5.1	12.7	2.2	5.5
1968	45.6	9.2	20.2	29.0	63.6	5.2	11.4	2.2	4.8
1969	48.8	7.7	15.8	33.3	68.2	5.6	11.5	2.2	4.5
1970	58.5	10.1	17.3	39.3 <sup>4</sup>	67.1	6.7	11.5	2.4	4.1
1971	62.2	11.2	18.0	41.7	67.0	6.8	10.9	2.5	4.1
1972	77.5	11.8 <sup>5</sup>	15.2	54.9 <sup>6</sup>	70.8	8.0	10.3	2.8	3.6
1973	79.3	4.9	6.2	62.3	78.6	9.1	11.5	3.0	3.7
1974	92.8	5.0	5.4	74.4	80.2	10.1	10.9	3.3	3.5
1975	100.8	4.3	4.3	82.5	81.9	10.7	10.6	3.2	3.2

<sup>1</sup> Does not include Federal income taxes paid by casinos.

<sup>2</sup> Cities and other local governments.

<sup>3</sup> Includes new State casino entertainment tax at 10 percent of sales.

<sup>4</sup> Includes new State flat fees on games and slot machines and State percentage fee rate increase based on gross revenue.

<sup>5</sup> Includes annual slot machine tax of \$250 for each machine operated during the fiscal year ended June 30, 1972. Effective July 1, 1972, the annual rate was reduced to \$50 for each machine because of an 80 percent Federal tax credit allowed to the State (see note 4).

Federal figures for fiscal 1973 reflect a substantial decrease because of the above noted rate reduction.

<sup>6</sup> Includes annual slot machine tax of \$200 for each machine (paid in advance of July 1, 1972) to be operated during the fiscal year ending June 30, 1973, which is based on the 80 percent Federal tax credit indicated in note 5 above.

Source: Nevada Gaming Control Board.

Approximately 29 percent of Nevada's 263,700 salaried employees in 1975 worked in the gaming industry and related tourist businesses. An additional 25 percent depended indirectly upon the gaming industry (e.g., construction workers, retail merchants, government workers).<sup>6</sup>

**THE STATE'S SHARE.** In fiscal year 1974, Nevada's General Fund collected \$148.5 million in taxes, license fees, and other revenue. Approximately 47 percent of that amount consisted of the various gaming and license fees. Table 5-2 shows gaming revenue collected by the Federal Government, the State of Nevada, and Nevada counties and municipalities from fiscal years 1964 to 1975.

Although gambling revenues constitute about one-third of Nevada's total State income, as compared to only 2 to 4 percent of the income of such States as New York and New Jersey, it is important to note that Nevada ranks only sixth among the States in total gambling revenues earned. New York and California earn more from on-track parimutuel racing alone than Nevada generates through assessments on casinos. New York's combined on-track, off-track, and lottery earnings in 1975 were almost three times greater than Nevada's gaming revenues.

Casino gaming in Nevada is subject to five different types of State taxes. Table 5-3 shows the amount collected in each of the five categories from 1970 to 1975. A brief description of each tax follows:

1. Quarterly percentage fees. This is a graduated tax based on net winnings before operating expenses. The fees are 3 percent of the first \$150,000, plus 4 percent of the next \$250,000, plus 5.5 percent of revenue in excess of \$400,000.

2. Annual State license fees. This flat fee is based on a graduated scale starting at \$100 for one game and increasing according to a formula based on the number of games operated by a licensee. The funds collected through this tax are distributed equally among Nevada's 17 counties after administrative costs have been deducted.

3. Quarterly flat license fees. This fee is also based on the number of games operated, beginning at \$12.50 for 1 game and increasing to \$20,000 for 36 games, plus \$25 for each game in excess of 36 games. Quarterly fees are also imposed upon slot machines. Establishments with 15 or fewer slot machines and no other gaming (restricted licensees) pay a license fee of \$100 per year in quarterly installments for each machine. Restricted licensees pay this fee instead of the quarterly percentage fees. All other establishments (nonrestricted licensees) pay \$10 per quarter for each slot machine.

4. Slot machine tax. This is an annual State tax of \$200 on each slot machine. This fee is payable to the State as a credit against the Federal tax of \$250 on each slot machine. The Federal Government thus receives \$50 on each machine. Nevada uses the funds collected through this tax to support education in the State.

5. Casino entertainment tax. This is a 10 percent tax on food, merchandise, and services in establishments having live entertainment and at least 51 slot machines or 4 gaming tables.

A sixth tax, the quarterly county license fee, is collected by the sheriff of each county. The fee covers card games

(\$25 a month for each table), other games such as 21, craps, and roulette (\$50 a month for each game), and slot machines (\$10 a month for each machine). Twenty-five percent of the revenue collected through this tax goes into the State's General Fund. The remainder is divided among the counties and cities.

Various other county, city, and town fees and taxes also are imposed on gaming licensees.

**GAMING IN CLARK COUNTY.** Two population centers in Nevada account for the vast majority of all gaming revenues: Las Vegas (Clark County) and Reno (Washoe County). The Lake Tahoe (Douglas County) resort area is another gambling center. Clark County generates

approximately 68 percent of Nevada's total gaming revenue. Table 5-4 compares gross taxable gaming revenue in Clark, Washoe, and Douglas Counties.

It is impossible to separate the growth of gaming revenue from the growth of the tourist trade as a whole. This trade can be measured in terms of tourist volume, hotel and motel room occupancy rates, and other factors, as shown in table 5-5.

In 1975, there were 7,000 more jobs in Clark County than the year before. Most of the increases were in the hotel and gaming service industries. The 47,000 jobs in these industries accounted for approximately 33 percent of total jobs in Clark County in 1975.

TABLE 5-3.—NEVADA GAMING LICENSE AND TAX FEES COLLECTED,\* 1970-1975

Year	Percentage fees		Annual license fees		Quarterly flat license fees		Slot machine taxes		Casino entertainment taxes	
	Amount	Percent change	Amount	Percent change	Amount	Percent change	Amount	Percent change	Amount	Percent change
1970	\$28,879,200	— <sup>1</sup>	\$1,133,150	— <sup>1</sup>	\$3,780,264	— <sup>1</sup>	— <sup>1</sup>	— <sup>1</sup>	\$6,320,825	— <sup>1</sup>
1971	31,624,229	+ 9.5	763,508	-32.6	3,616,061	- 4.3	\$8,760,609 <sup>2</sup>	— <sup>1</sup>	6,862,864	+ 8.6
1972	35,898,063	+13.5	1,203,242	(1)	4,363,810	+20.7	8,760,609 <sup>2</sup>	— <sup>1</sup>	7,523,931	+ 9.6
1973	42,150,445	+17.4	1,638,000	+35.1	4,989,022	+14.3	9,581,241	+9.4	8,675,846	+15.3
1974	49,857,754	+18.3	1,438,550	(1)	5,169,008	+ 3.6	9,847,000	+2.8	10,710,442	+23.5
1975	57,001,514	+14.3	1,070,400	-25.6	5,059,064	- 2.1	10,331,646	+4.9	11,056,906	+ 3.2

<sup>1</sup> Percentage increase/decrease computations not meaningful.

<sup>2</sup> Collection of this tax began in the second quarter of calendar year 1972.

\*The figures include taxes on sports and race books, which, combined, account for only a tiny percentage of the total amounts collected in the applicable categories.

Source: Nevada Gaming Control Board.

TABLE 5-4.—GROSS TAXABLE GAMING REVENUE,\* CLARK, WASHOE, AND DOUGLAS COUNTIES, 1970-1975

Year	Clark County		Washoe County		Douglas County	
	Amount	Percent of State	Amount	Percent of State	Amount	Percent of State
1970	\$369,286,977	64.3	\$115,806,312	20.2	\$ 71,544,128	12.5
1971	399,410,971	63.0	132,843,184	20.9	80,552,063	12.7
1972	476,126,720	65.1	138,322,042	18.9	91,252,219	12.5
1973	586,093,660	66.9	158,466,251	18.1	99,529,671	11.4
1974	684,714,502	68.2	170,409,710	17.0	112,305,672	11.2
1975	770,336,695	68.4	193,212,293	17.2	121,961,020	10.9

\*The total of all sums received as winnings less only the total of all sums paid out as losses (before operating expenses).

Source: Nevada Gaming Control Board.

TABLE 5-5.—RESORT TRADE REVENUE, CLARK COUNTY, NEVADA

	1975	1974	1973	Percent change 1973-1975
Estimated tourist volume <sup>1</sup>	9,151,427	8,664,751	8,474,727	+ 5.6
Number of hotel rooms	21,107	18,557	17,519	+20.4
Hotel occupancy percentage	84.2%	86.0%	88.3%	- 4.1
Number of motel rooms	14,083	14,269	11,679	+20.6
Motel occupancy percentage	72.8%	68.7%	78.5%	- 5.7
Average number of nights stayed	3.0	2.7	2.7	+11.1
Estimated revenue @ \$50 per person per day <sup>2</sup>	\$1,412,228,560	\$1,206,374,805	\$1,185,989,509	+19.1
Gaming revenue	\$ 770,336,695	\$ 684,828,388	\$ 586,093,660	+31.4
Total revenue	\$2,182,565,255	\$1,891,089,307	\$1,772,083,169	+23.7

<sup>1</sup> Includes 750,000-850,000 visitors in recreation vehicles and 950,000-1,000,000 visitors to the area who did not remain overnight.

<sup>2</sup> Includes conventioner spending @\$60 per person per day for 4.59 nights stayed, gaming revenue excluded.

## EXTERNAL CONTROL

Primary responsibility for regulating the Nevada gaming industry resides with the Nevada Gaming Commission and its auxiliary State agencies—the State Gaming Control Board and the Gaming Policy Committee. On the Federal level, the Department of Justice, the Internal Revenue Service, and, most recently, the Securities and Exchange Commission take an active interest in gaming affairs, both to detect possible violations of Federal law by those within the industry and to protect gaming licensees from crimes perpetrated by outsiders. On the local level, law enforcement agencies in Nevada assist the State Gaming Control Board in conducting background investigations on license applicants in addition to various other gaming-related enforcement responsibilities. This combination of State, Federal, and local oversight make Nevada gaming the most closely scrutinized private industry in the country.

2. Gaming licenses: Provides for the licensing of those who conduct gaming, horse bookmaking, and sports bookmaking, as well as those who provide information that facilitates the placing of wagers. In addition, those who manufacture, lease, or deliver gaming equipment are subject to licensing requirements.

3. License fees: Imposes several types of State and county fees and taxes on gaming licensees.

4. Licensing of corporations: Specifies the conditions under which private and publicly traded corporations may obtain gaming licenses.

## State Regulation

In the 45 years since gambling in Nevada was legalized, the State's role in licensed gaming has evolved from a simple tax collection scheme into a sophisticated regulatory system covering every facet of the gaming operation.

Nevada had been ill prepared to deal with the rapid growth of the gaming industry following World War II. The State's overburdened license-granting authority issued gaming licenses to people with long criminal histories and overt ties to organized crime. This influence in the State gave Nevada gaming an unsavory reputation among reputable financial institutions and discouraged investment by legitimate business. The gaming control mechanism that exists today is the result of a sustained trial-by-fire effort to remove the fact as well as the appearance of wrongdoing. There is considerable evidence that this effort is succeeding. The presence of large public corporations in Nevada gaming is one measure of that success. Gradually, too, the reluctance of banks and other

## Gaming Control Act

The Nevada Gaming Control Act (Chapter 463 of the Nevada Revised Statutes) is the foundation upon which the gaming industry is built. The act has been amended and updated several times since its passage in 1931. The most significant recent amendments, passed in 1967 and 1969, concerned the issuance of gaming licenses to public corporations. The following is a synopsis of the act's major provisions.

1. State regulatory mechanism: Establishes and sets out the duties of the Gaming Policy Committee, headed by the Governor; the Nevada Gaming Commission, whose members are appointed by the Governor; and the State Gaming Control Board, the independent investigatory and enforcement arm of the Gaming Commission.

traditionally conservative financial institutions to invest in Nevada gaming properties is being overcome.

The State regulatory mechanism consists of three bodies: the Gaming Policy Committee, headed by the Governor and responsible for discussing matters of gaming policy; the Nevada Gaming Commission, consisting of five members appointed by the Governor and having final authority to require, grant, deny, or revoke gaming licenses, adopt regulations, and invoke disciplinary action; and the State Gaming Control Board consisting of three full-time members and a staff of investigators, auditors, tax specialists, researchers, and financial experts.

Apart from its primary responsibilities—license granting, tax collection, and auditing—the Gaming Commission has authority over a wide variety of gaming-related matters. Regulation of the manner in which casino games operate is fairly limited, however, and the most conspicuous absence of regulation is in the area of game odds and payoff ratios. Slot machine payoff ratios may vary considerably among establishments. The only requirements in this regard are that the payoffs be posted on each machine and that any posted winning combination be achievable. Unlike the British system, Nevada has no prohibition against the double 0 (00) in roulette, the inclusion of which tips the odds more heavily in favor of the house. On the other hand, gaming regulations are stringent and comprehensive in such areas as the licensing of slot machine manufacturers and distributors, the licensing of private and publicly traded corporations, parimutuel wagering, the operation of race books, sports pools and wire services, and jai alai.

In the area of license granting and revocation, the Gaming Commission bases its decisions on the reports and recommendations submitted to it by the Gaming Control Board. Over the years, the board's functions have gradually been expanded. The board's duties today include the conducting of background investigations on applicants for gaming licenses; the enforcement of gaming laws and regulations, the collection of gaming taxes, and the inspection of premises where gaming is conducted or gaming devices are manufactured and sold. Chart 5-1 shows the organization and functions of the Gaming Control Board, the Gaming Commission, and the Gaming Policy Committee.

The first line of defense against the infiltration of casino interests by organized crime is the licensing investigation process. The Gaming Control Board conducts thorough background investigations into the personal and professional histories of applicants to determine their suitability for licensing and to uncover any possible links to organized crime figures that may be concealed through complex financial maneuvering. Each person who makes an application to invest money or hold an equity interest in a gaming establishment must submit a full disclosure of his personal and financial history. Investigators make personal, business, law enforcement, and credit reference checks to trace the applicant's history from his 21st birthday on. If the applicant is reputed to have organized crime affiliations, investigators attempt to determine the

nature and extent of these affiliations or whether in fact they exist at all.

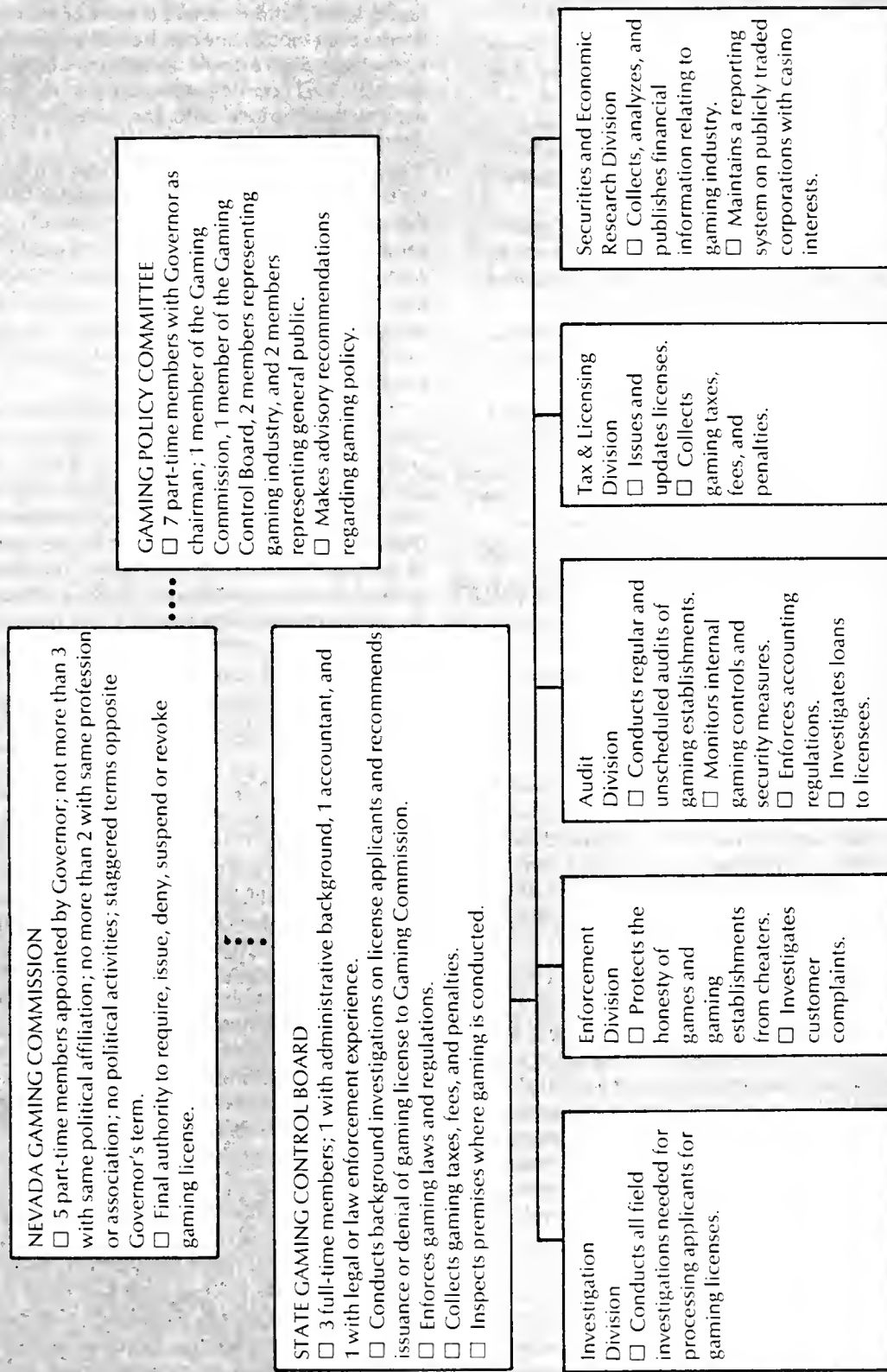
Two types of hearings are held—a public hearing conducted for each applicant and a private one conducted in cases where there is doubt as to the applicant's suitability for licensing. At the public hearing, the applicant has the opportunity to rebut any information he feels is inaccurate, and he may be represented by counsel. Nevada law stipulates that the applicant must bear the entire cost of the investigation regardless of the outcome. The cost of a particularly long and involved investigation can exceed \$100,000.

As thorough as this investigation process may be, it is not infallible, and the possibility exists that some hidden criminal investments may escape detection. If such interests or other irregularities are eventually uncovered, the Gaming Commission has the authority to suspend or revoke the gaming license, subject to challenge by the licensee which takes the form of a judicial review of the record rather than a trial *de novo* hearing. Gaming Commission decisions in this regard are rarely challenged, however.

There are a number of judicial restraints built into the licensing process that tend to complicate it. Some of the problems concern the handling of confidential informants, the right to counsel, self-incrimination privileges, and due process. Due process, for example, is required in gaming control as much as in other areas of governmental action. Proof of unsuitability for licensing is often difficult to obtain and document, and without such proof the license cannot be denied. However, the degree of proof sought by the Gaming Commission may be less than that required in a court of law in a criminal case. The Commission is empowered by law to set its own definition of unsuitability since the gaming license is considered a privilege rather than a legal right. Since criminal statutes do not define "organized crime" it is sometimes difficult to prove that an individual is a member of an organized criminal group. Sometimes businessmen associate with unsavory individuals, and it is necessary to make a distinction between a harmless association and one that would damage the image of Nevada or that may indicate hidden interest. Another problem for the license-granting authorities is that experienced gamblers often have backgrounds in illegal gambling when they apply for licenses.<sup>7</sup> Their backgrounds must be weighed against the kind of expertise and general integrity they bring to a gambling venture.

The enormous sums of money changing hands daily at every casino provide an irresistible lure to clever and dextrous cheaters who believe they can beat the system. The Enforcement Division of the State Gaming Control Board is responsible for the prevention, detection, and prosecution of cheating offenses (scams) perpetrated by casino employees and by gaming customers. In order to insure the integrity of games, the division conducts extensive undercover surveillance, develops informants within the industry, and encourages the industry to develop its own security systems. In addition, enforce-

**CHART 5-1.—ORGANIZATION AND FUNCTIONS, NEVADA GAMING REGULATORY AGENCIES**





ment agents routinely, but on an unannounced basis, obtain cards and dice from casinos to examine them for signs of abnormality. They also examine thousands of slot machines each year.

Many cheaters perform like magicians, using sleight-of-hand techniques that are extremely difficult to detect. For this reason, the Gaming Control Board must depend heavily on informants. It is difficult as well to convict cheaters in court since in most cases there is no physical evidence.<sup>8</sup> In addition, the gaming authorities risk being sued for libel or slander when they disseminate information to casinos about suspected cheaters. For the same reason, gaming licensees may be reluctant to inform gaming authorities about persons they suspect of cheating. It is problems such as these that preclude the total elimination of cheating and theft from Nevada gambling, and even preclude an accurate estimate of the amount of cheating that actually occurs.

A different type of scam may occur on the management level within a casino. The process known as “skimming” was thought to have been fairly common when many of the casinos were controlled by organized crime. Skimming is the process whereby a portion of the casino revenues disappears from the official count. Skimmed casino money escapes taxation, and in cases where organized crime figures hold concealed interests, it can be returned to these persons as profit on their investments. The Audit Division of the Gaming Control Board attempts to prevent skimming and insure that the State is receiving its fair share of taxes from gaming revenue. Gaming regulations prescribe detailed internal control procedures that all casinos must follow. These procedures (discussed in greater detail later) cover the movement, counting, and monitoring of cash, chips, and credit markers at all points along the route between the customer’s pocket and the casino’s coffers. The Commission has found these controls to be generally effective and believes that the incidence of skimming has been significantly reduced during the past 10 years.

The Nevada gaming control agencies share many of the problems of other regulatory bodies—they must walk a fine line between too much regulation, which could harm and possibly destroy the industry, and too little regulation, which fosters the kind of abuse visited upon the State by Bugsy Siegal and those who followed him to Las Vegas. Nevada has used its 45 years of experience in the gaming field to develop a regulatory system that is sophisticated, efficient, and, on the whole, capable of maintaining the integrity of the gaming industry at an acceptable level.

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## Local Law Enforcement

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The Nevada Gaming Control Act provides that, once having been licensed by the State, establishments that offer gaming must obtain licenses from the county and, if applicable, from the city or town in which they are

located. Accordingly, city and county law enforcement agencies conduct background investigations on license applicants in conjunction with the State Gaming Control Board. Local authorities have the power to deny a license even though one may have already been granted by the State. Such a denial rarely occurs, however, since the State-level licensing procedure is more thorough and detailed than the local ones, and more likely to uncover wrongdoing if it exists.

Local law enforcement agencies also are responsible for enforcing the various gambling-related laws, such as those against cheating and the operation of unlicensed gambling. The Clark County (Las Vegas area) District Attorney’s Office handles approximately 30 adult gambling prosecutions each year, involving, for example, possession or sale of cheating games and devices, such as those designed to make a slot machine operate without coins.

The State Gaming Control Board has statutory authority to maintain a list of “undesirables”—generally organized crime figures—who are to be barred from the premises of all casinos. Because these people traditionally have been attracted to Las Vegas, the Las Vegas Metropolitan Police Department keeps track of their interstate movements and of the movement of others who pose a potential problem for the industry, such as known cheaters. Other police departments in the State may also perform such functions but on a smaller scale. Testimony before the National Gambling Commission indicated that gambling-related problems are considered minimal and that only a small percentage of police workload consists of actual gambling cases.<sup>9</sup>

A larger portion of the workload of local police departments, prosecutors’ offices, and courts is devoted to cases not easily linked to legalized gambling. It is difficult to establish the exact correlation between legal gambling and crime in Nevada, but it is known that a relationship exists. Of the total number of crimes committed in Las Vegas, the State’s most populous city, a few, such as cheating in the casinos, are directly attributable to gambling. Certain white collar crimes, such as the use of stolen credit cards and the passing of worthless checks, also are prevalent in and around the casinos and in businesses that cater to tourists. Only a small percentage of crimes are committed by persons who have lost all their money gambling.

Although Las Vegas experiences higher-than-average murder, rape, robbery, and burglary rates compared with the country as a whole, its crime rates are roughly comparable to those of similar-sized cities and to the crime rates of other resort areas such as Daytona Beach and Ft. Lauderdale, Fla. (see table 5-6). Many criminals are attracted to resorts by the ready flow of cash and the high volume of tourism. Tourists often make easy targets for robbers, pickpockets, purse snatchers, and burglars. Twenty percent of the crime victims in Las Vegas are out-of-State visitors.



TABLE 5-6.—RESORT AREA CRIME RATES, 1974

Area (SMSA)	Population	Rates per 100,000 population		
		Total crime*	Violent crime	Property crime
Atlantic City, N.J. (Incl. Atlantic Co.)	178,507	6,111.2	706.6	5,680.4
Daytona Beach, Fla. (Incl. Volusia Co.)	202,977	8,993.1	641.0	8,352.2
Ft. Lauderdale, Fla. (Incl. Broward Co.)	812,221	9,251.7	643.3	8,608.4
Las Vegas, Nev. (Incl. Clark Co.)	311,153	9,317.9	891.8	8,426.1
Miami, Fla. (Incl. Dade Co.)	1,385,889	9,130.2	1,205.3	7,924.9
Reno, Nev. (Incl. Washoe Co.)	138,965	7,197.7	447.1	6,750.6
Cities 100,000-250,000 pop.	15,488,000	7,111.0	600.0	6,511.0
Cities 250,000-500,000 pop.	10,773,000	7,755.4	853.4	6,902.0
U.S.A. Total	211,392,000	4,821.4	458.8	4,362.6

\*Includes: (1) Violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault; and  
(2) Property crimes of burglary, larceny over \$50, and auto theft.

Source: FBI Uniform Crime Reports, 1974.

The round-the-clock lifestyle is another factor affecting crime rates in Las Vegas. With many of the casinos, restaurants, and bars remaining open 24 hours a day, there are many potential crime victims on the street—and away from their hotel rooms—at all times. Various other social and demographic characteristics are thought to contribute to crime in Las Vegas, among them, the comparative youthfulness of the population, the high rate of population growth and mobility, and the fact that many Las Vegas residents have histories of financial, marital, or criminal problems in the communities from which they came.<sup>10</sup>

Like many tourist and convention centers, such as New York, New Orleans, and San Francisco, Las Vegas has a fairly high rate of prostitution. Although illegal in Clark County, prostitution is generally accepted as a fact of life by local law enforcement officials, who believe, first, that they are powerless to eradicate it, and second, that an attempt to do so would constitute an inefficient use of available police resources. On the other hand, prostitution is considered a serious problem when it occurs in conjunction with such other crimes as robbery, larceny, assault, and narcotics use. Of the hundreds of people frequenting hotel and casino facilities at any given time, it is extremely difficult to single out the few who are prostitutes, and even more difficult to obtain the proof needed to take legal action. In recent years, the city has begun to attract significant numbers of conventioners—mostly men—and the supply of prostitutes has kept pace with the demand. Although conceding that their premises may be used by prostitutes, hotel/casino owners and managers state emphatically that they receive no profits from the activity and do not encourage it.<sup>11</sup> The Commission found no evidence of collusion between prostitutes and hotel owners or managers.

## Federal Involvement

The Department of Justice, the Internal Revenue Service, and the Securities and Exchange Commission are the primary Federal agencies concerned with Nevada gambling.

Three components of the Department of Justice—the U.S. Attorney for the District of Nevada, the Los Angeles Organized Crime Strike Force, and the FBI—are responsible for investigating and prosecuting violations of Federal gambling statutes as well as such nongambling violations as loansharking, credit fraud, stolen and counterfeit securities, counterfeit currency, and extortion.

The Los Angeles Organized Crime Strike Force was formed in 1970. The Strike Force believes that its involvement in Nevada has resulted in the strengthening of State statutes and regulations pertaining to gambling and the reduction of organized crime influence in the State. The conviction of several former owners of the Flamingo Hotel for skimming, for example, has resulted in the establishment of accounting procedures that make it more difficult to duplicate the Flamingo thefts. The recent conviction of some New York racketeers, attributable to the joint efforts of Federal and State authorities, led to increased controls on and accountability of junket operations and personnel. During his appearance before National Gambling Commission hearings in Las Vegas, the director of the Los Angeles Strike Force testified that organized crime can still be a silent partner in Nevada casinos but that the great majority of the legal gambling industry is not affected by it.<sup>12</sup> The U.S. Attorney's Office assists the Strike Force in all of its gambling prosecutions, but due to its small staff and the existence of the Strike

Force, its overall involvement in gambling cases is minimal.

Among the crimes investigated by the Las Vegas office of the FBI are two directly related to casino gambling—extortionate credit transactions and junketeering. The FBI reports that substantial amounts of loansharking money circulate in the Las Vegas area, and that some of this money originates from criminal groups in the East. The agency believes that its investigations have helped reduce but not eliminate the loansharking activity in Las Vegas.

Junkets to Las Vegas are an important source of revenue for some of the larger casino hotels. But sometimes junkets are organized for the purpose of defrauding the casino. As an example, a junketeer may bring a group of people to Las Vegas with the understanding that all the participants will be extended a certain amount of credit. When the players have used only a small portion of the chips they have been given, they cash in the remainder and leave. In such cases, the casinos have little hope of collecting on the credit extended. The FBI has investigated several instances of junket fraud, most of which have been much more complex than the type described above.

The Justice Department believes that its presence in Nevada has had a healthy effect on the gambling industry. On the whole, gambling industry spokesmen concur and emphasize their willingness to cooperate in Federal investigations, particularly since the casinos themselves are often the victims of crime.

The involvement of the Internal Revenue Service in Nevada is met with less enthusiasm. There is considerable antagonism between the IRS and some of the casinos. The IRS investigates suspected cases of income tax evasion. The subjects of its investigations may be the casinos themselves or private individuals to whom the

casinos have extended credit. Some of the gaming licensees believe that IRS policies with respect to gambling are based on a lack of understanding of how the industry operates and an ingrained skepticism about the industry's willingness to report its income honestly. They believe, further, that the IRS practice of seeking information about casino patrons undermines the good customer relations that the casinos work so hard to establish. In testimony before the National Gambling Commission, gambling industry spokesmen also complained that the methods employed by the IRS to subpoena information were both disruptive and costly.

Responding to Commission inquiries in this area, the IRS stated that the "cash flow" situation existing in the casino industry makes it extremely difficult to conduct effective audits. According to the Service, no internal control system can effectively prevent skimming unless there is a high level of integrity at all levels of management. The IRS believes that, historically, the casino industry has lacked such integrity, and it is not yet convinced that sufficient improvements have occurred. Finally, the Service stated that it is able to produce compliance with income tax laws by maintaining rigorous investigative and surveillance capability. The IRS declined to provide the Commission with specific information regarding ongoing activities designed to detect the skimming of unreported income, claiming that the release of such information would jeopardize these projects.

The jurisdiction of the Securities and Exchange Commission is limited to corporations whose stock is publicly traded. The SEC's principal concerns in this regard are the adequacy of public disclosure of income and interests and the fairness of securities markets. The SEC has told the Commission that it now considers properly managed casinos to be auditable entities.

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## INSIDE THE CASINOS

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The modern Nevada casino bears little resemblance to its storefront predecessor of the 1930's and early 1940's. Most of the same games are still popular—21, craps, roulette—but the packaging has changed radically. Depression era gambling dens were slow to shed the trappings of illegality—the discreet entranceway; the shadowy, smoky rooms; and the lingering sentiment that there was something inherently disreputable about the entire business. All that has changed. No longer doubtful of their respectability, Nevada gambling houses today present an ostentatious spectacle to the world with their neon lights, opulent decor, 2,100 gaming tables, and 40,000 slot machines.

Casino management and operational procedures have also changed significantly over the years. Few businesses today operate with the sophistication, technology, and accountability found in Nevada casinos. Many of the refinements in operational procedures parallel developments in business and industry elsewhere, such as the application of management-by-objective techniques

and computer technology. But some of the most significant changes in the industry's operation and regulation have been brought about by notoriety—by scandalous revelations that at one time or another seemed to cast the industry back into the disrepute from which it came. Had it not been for the influx of organized crime to Nevada following World War II, and the publicity generated by such underworld characters as Bugsy Siegal, Meyer Lansky, and Tony Conero, the effective accounting and regulatory system that now exists might never have been developed. With each new exposé of wrongdoing, the industry and the State have reacted by strengthening and refining the internal and external control mechanisms in an effort to prevent further transgressions of the nature uncovered.

The remainder of this section examines the modern Nevada casino—what it offers the public, its profitability, how it is managed and operated, its internal control mechanisms, and its auditability.

## What the Casinos Offer

To many people, Nevada is synonymous with gambling. But according to a survey undertaken by the Las Vegas Convention and Visitors Authority, gambling is only one of the attractions of that city. Approximately one-third of the 1,419 people polled stated that gambling was the main reason for their trip to Las Vegas. Thirty-six percent stated that they came for the "entertainment," or shows, and 31 percent said they came for other reasons, e.g., for business conventions, for relaxation, or to visit friends.

There are approximately 120 small- and medium-sized casinos in Nevada that offer only gaming and produce approximately 3 percent of the total gaming revenue in the State. Ninety-five percent of the State's gaming revenue is produced by the 76 large casinos, each of which generates an annual gross gaming revenue in excess of \$1 million. Most of the large casinos have restaurants, bars, and entertainment, and many are combined with hotels. In the last category are 20 "super casinos," those hotel/casino complexes located primarily on the Las Vegas Strip and offering many forms of recreation and entertainment in addition to huge gambling facilities.<sup>13</sup> All of the hotel/casinos have one or more show lounges or theaters that feature well-known entertainers. All have at least one restaurant. But apart from the basics—gambling,

entertainment, food, and lodging—competition among the hotel/casinos has promoted the development of unique and unusual features and services. The MGM Grand Hotel's nostalgic Hollywood decor is a tourist attraction in itself. The Grand also offers jai alai frontons. Caesar's Palace hosts the Alan King Tennis Classic each year and altogether sponsors more television sports shows than any other single sponsor. The Stardust offers horse and sports betting on its premises. The Sparks Nuggett sponsors an annual Hereford bull sale in one of its showrooms. Most of the hotel/casinos also offer a variety of sports programs such as tennis, golf, and swimming, as well as such amenities as babysitting services, beauty salons, special recreational programs for children and teenagers, and convention facilities.

The 20 hotel/casino complexes contain almost half of the total number of games in the State and more than one-fourth of the slot machines found in gaming establishments statewide. The primary games are 21, craps, roulette, and baccarat.

Another casino game available in Nevada is the slot machine. At the end of 1975, there were 48,757 slot machines licensed in Nevada; these machines supplied 32.8 percent of the total taxable revenue derived by the State from gambling. Most casinos have large banks of slot machines, in different denominations (1¢, 5¢, 10¢, 25¢, 50¢, \$1, and \$5); they are also found in public areas such

TABLE 5-7.—PERCENT OF REVENUE PRODUCED BY GAMES AND DEVICES, FISCAL YEAR 1975

	Downtown Las Vegas		Las Vegas Strip		South Lake Tahoe**		Reno/Sparks	
	Units	%	Units	%	Units	%	Units	%
<b>Games</b>								
Twenty-one	267	21.3	586	29.1	224	30.9	363	26.3
Craps	52	16.3	135	31.0	30	11.8	50	9.9
Roulette	26	2.1	51	3.6	17	2.7	24	1.9
Baccarat	11	1.4	45	11.3	8	2.7	17	1.2
Other	19	1.1	35	1.2	5	1.0	7	0.4
Totals	375	42.2	852	76.2	284	49.1	461	39.7
<b>Devices</b>								
5¢ slot machine	5,491	27.4	7,161	9.5	2,688	14.4	4,875	18.6
10¢ slot machine	569	3.1	969	1.4	847	5.9	1,414	6.4
25¢ slot machine	955	9.2	1,860	4.6	989	10.5	1,358	10.7
50¢ slot machine	60	0.5	90	0.2	153	2.4	224	2.4
\$1 slot machine	132	2.1	235	1.0	141	4.6	297	6.0
Pinball machine	59	0.4	—	—	—	—	3	0.0
Other	351	1.6	429	1.2	69	1.4	84	1.0
Totals	7,617	44.3	10,744	17.9	4,887	39.2	8,255	45.1
<b>Other Gaming</b>								
Keno	12	9.6	21	3.6	10	9.2	24	13.3
Poker	40	3.3	75	1.8	11	1.2	2	0.7
Miscellaneous*	15	0.6	17	0.5	7	1.3	28	1.2
Totals	67	13.5	113	5.9	28	11.7	54	15.2
<b>Grand Totals</b>	<b>8,059</b>	<b>100.0</b>	<b>11,709</b>	<b>100.0</b>	<b>5,199</b>	<b>100.0</b>	<b>8,770</b>	<b>100.0</b>

\*Bingo and panguingui.

\*\*Includes figures for Douglas County.

Source: Nevada Gaming Control Board.

as drugstores, grocery stores, and the McCarran airport in Las Vegas. The proprietors of these machines may have as many machines as they want; each machine must be registered with the State Gaming Commission and that registration must include a statement of the percentage of payout. The payouts returned to the players approximate 85 percent of the volume played, with the range varying from 78 percent to 97 percent; the higher payouts are designed to increase the amount of play. The payout ratio, which is not subject to State regulations, is set by each proprietor.

In contrast, the gaming board of Great Britain has placed strict limitations on the availability and location of slot machines; for example, casinos are allocated no more than two "fruit"—i.e., slot—machines. All clubs, including

sporting and drinking clubs, are permitted to have up to two machines. Because of the popularity of this form of gambling in Great Britain, these restrictions are intended to limit play by the public. Further, it is required that the percentage of payout be posted on the machine.

In the Bahamas, as in Nevada, large banks of slot machines are permitted in the casinos; however, permission must be obtained from the gaming board before the number of machines can be increased at any one place.

Table 5-7 shows the number of games and slot machines and the percentage of revenue produced by each in four areas of Nevada—Downtown Las Vegas, the Las Vegas Strip, South Lake Tahoe, and Reno/Sparks. Twenty-one, craps, and the 5¢ slot machine are the top three revenue

TABLE 5-8.—INCOME VERSUS EXPENSES,\* FISCAL YEAR 1975

	Percentages			
	Downtown Las Vegas	Las Vegas Strip	South Lake Tahoe***	Reno/ Sparks
<b>Income</b>				
Casino department	70.1	58.3	64.3	67.5
Rooms department	6.5	13.6	6.3	5.1
Food department	11.8	13.9	15.7	14.1
Beverage department	8.1	10.8	11.6	10.7
Other revenue-producing departments	3.5	3.4	2.1	2.6
<b>Total Revenues</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Expenses</b>				
Direct expenses	42.8	40.6	34.4	41.3
Cost of goods sold	8.1	7.3	10.1	9.3
General and administrative expenses				
Advertising and promotion	2.8	1.7	4.5	4.7
Complimentaries	9.0	11.4	8.1	7.9
Junket expenses	—	5.9	0.7	0.0
Depreciation—buildings	1.1	1.4	1.3	0.7
Depreciation and amortization—other	1.8	2.0	1.7	2.0
Real estate taxes	0.8	0.7	0.7	0.6
Other taxes & licenses	0.1	0.1	0.2	0.2
Music & entertainment	1.0	7.2	5.0	3.2
Rent of premises	2.5	0.5	1.4	1.4
Payroll taxes & employee benefits	1.3	1.1	2.4	1.4
Salaries—officers/owners	0.8	0.3	0.7	0.9
Salaries—other employees	4.7	5.3	8.3	6.7
Miscellaneous	7.3	7.8	7.8	8.3
<b>Total Expenses</b>	<b>84.1</b>	<b>93.3</b>	<b>87.3</b>	<b>88.6</b>
<b>Net Operating Income</b>	<b>15.9</b>	<b>6.7</b>	<b>12.7</b>	<b>11.4</b>
<b>Dollar Values</b>				
Aggregate revenue	\$212,956,000	\$992,711,000	\$184,344,000	\$234,774,000
Aggregate net operating income**	\$ 33,860,000	\$ 66,511,000	\$ 23,402,000	\$ 26,764,000
Average gross revenue per casino**	\$ 14,197,000	\$ 35,454,000	\$ 30,724,000	\$ 13,043,000
Average net operating income per casino**	\$ 2,257,000	\$ 2,375,000	\$ 3,900,000	\$ 1,487,000
<b>Number of Locations</b>	<b>15</b>	<b>28</b>	<b>6</b>	<b>18</b>

\*Casinos with annual gross revenues of \$1 million or more.

\*\*Before extraordinary items and Federal income taxes.

\*\*\*Includes Douglas County.

Source: Nevada Gaming Abstract, 1975 Supplement, Nevada State Gaming Control Board.

producers in these areas. In the smaller communities, such as Elko, Reno, and Tahoe, keno and bingo account for a higher percentage of the total gaming revenue than they do on the Strip.

## Casino Profitability

An investor looking for get-rich-quick schemes and easy money is bound to be disappointed by the realities of the casino gambling business. Although the successful casinos provide a high rate of return on their investments, the profits of the industry as a whole are less spectacular. Table 5-8 compares fiscal year 1975 income versus expenses for four areas of Nevada—Downtown Las Vegas, the Las Vegas Strip, South Lake Tahoe (Douglas County), and Reno/Sparks. By law, the statistics for individual establishments must be kept confidential. The aggregate figures contained in this table thus conceal the fact that some of the casinos may actually operate at a loss, as was the case with some of the Hughes Tool Co. casino holdings from 1968 to 1971.

Although gaming is the primary source of revenue in all four of the locations shown in table 5-8, the ratio of gaming to total revenue is somewhat lower on the Las Vegas Strip, where room revenues are significantly higher than at the three other locations. In the "expenses" category, the Strip casinos allocate a higher percentage of their operating budgets than the other locations to the provision of complimentary items (food, rooms, drinks), a result of the Strip casinos' efforts to attract the high rollers, many of whom come to Las Vegas on junkets.

Comparing the average gross revenue per casino among the four locations indicates that the Lake Tahoe establishments slightly outearned the Strip casinos during fiscal year 1975. The most likely explanation is that competition is less keen at Lake Tahoe than on the Strip, where funds available for expansion may be nearly exhausted.

Table 5-9 shows the percentage return (before Federal taxes) on equity capital investments by the casinos in the same four areas as above for fiscal years 1967 through 1975. The figures in table 5-9 were derived by dividing the net operating income of the casinos by their net (equity) capital (assets minus liabilities). For example, if the total value of a casino were estimated at \$5 million after all

creditors had been paid, and that casino produces a net operating income of \$1 million in a given year, then the percentage return on equity capital for that year would be 20 percent before Federal taxes. If the casino were a corporation, as many are, the rate of return on investment after Federal taxes would be about half that amount, or 10 percent.

On the Las Vegas Strip, the investment returns ranged from 14.2 percent to 58.5 percent, or an average of 26.3 percent before Federal taxes and 13.2 percent after taxes. This rate is comparable to that of high-seller concentration industries in the manufacturing sector.<sup>14</sup> There are a number of explanations for the sharp year-to-year fluctuations in the Las Vegas Strip figures. According to one economist, the depressed state of the economy has affected the Strip casinos in particular because of their heavy reliance on big spenders, many of whom have become reluctant to gamble away huge sums of money.<sup>15</sup> Other factors cited included the intensification of competition caused by the addition of new hotels, and the failure of management to hold down various expenses in light of the unfavorable economic conditions, particularly the expenditures for "complimentaries."<sup>16</sup>

TABLE 5-9.—RETURN ON EQUITY CAPITAL,\* GROUP I CASINOS, FISCAL YEARS 1967-1975

Fiscal year	Percentages			
	Las Vegas Strip	Downtown Las Vegas	South Lake Tahoe**	Reno/Sparks
1967	24.1	20.2	(1)	21.1
1968	16.6	15.9	(1)	20.9
1969	58.5	42.5	29.1	23.4
1970	24.8	37.2	26.8	21.5
1971	14.2	36.4	32.7	19.8
1972	20.0	44.7	27.5	28.5
1973	31.9	44.0	32.6	35.9
1974	24.4	42.8	32.3	34.1
1975	22.1	33.5	25.9	37.5

\*Before Federal income taxes and extraordinary items.

\*\*Includes all of Douglas County.

(1) Computations not meaningful.

Source: *Nevada Gaming Abstract* and 1972, 1973, and 1974

Supplements, published by the State Gaming Control Board.

## HOW THE CASINOS OPERATE

In many respects, the casinos of Nevada operate like any other business that has a product or service to sell. What makes casinos unique is that their principal stock in trade is cash, and that dozens of transactions may take place before a single "sale" is complete. A customer may enter a casino with \$500 in his pocket. Two hours later he may have only \$300; after 3 hours he may have \$600. The sale is complete when the customer leaves the casino

with either more or less than the \$500 he had initially.

Complex procedures have been developed to keep an accurate account of the thousands of exchanges of cash, chips, and credit that take place daily between the casino and its customers. Many of these procedures are in the form of State regulations designed to insure that all credit transactions are properly recorded, that revenues are

accurately counted, and that the State receives its fair share of the proceeds.

The larger casinos offer a number of services in addition to gambling—namely, food, drinks, entertainment, and rooms. All of these operations are interrelated, and the quality of service offered in one division can significantly affect the volume of business in the others.

Although no two casinos operate in exactly the same manner, State regulations, similarities in services offered, and standard business practices tend to minimize operational differences. The description of the internal casino organization and operation that follows is based on hearing testimony, on information supplied to the Commission at a presentation by one of the large Las Vegas Strip casinos, and on sections of the State-prescribed accounting procedures. The casino described below is not modeled after a particular hotel/casino but represents, instead, a selection of features from several of the Strip's larger gaming establishments.

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## The Golden Grotto Casino

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The Golden Grotto is a fictitious hotel/casino complex with 1,100 rooms, 2 show lounges, 4 restaurants, an 18,000-square-foot casino, 25,000 square feet of convention facilities, and 2,500 employees. In 1975, its gross revenue from all sources exceeded \$77 million. Approximately 60 percent of that amount consisted of gaming revenue. Its net operating income for 1975 was \$6.9 million. The Golden Grotto is a corporation whose stock is publicly traded and whose assets are valued at \$99 million.

The Casino Department at the Golden Grotto consists of three divisions—Operational, Marketing, and Financial. The Operational Division is responsible for the operation of all casino games, and the hiring and assignment of personnel to staff gaming positions. The Marketing Division's responsibilities include the granting of credit, customer relations, coordination of group activities such as junkets and conventions, identification and handling of VIP customers, supervision of complimentary provisions, and supervision of the company's branch office. The Financial Division is responsible for the casino's system of internal controls and for insuring that all revenue is properly recorded. Chart 5-2 shows the organization and staffing of the Casino Department.

**CREDIT.** One of the most important aspects of the casino's business involves the granting of credit to casino customers. At the Golden Grotto, one-third of all gaming transactions involve some form of credit—credit cards, checks, or markers (IOU's). Registered guests at the hotel and other patrons are generally permitted to cash checks in amounts not exceeding \$500, provided they have the proper credit cards and personal identification. Other persons who wish to gamble on credit or to exceed the \$500 amount must complete a credit application and furnish certain personal and financial information to the casino. The casino credit manager verifies the information on the application by contacting the customer's banks and through the use of a central credit bureau, a commercial

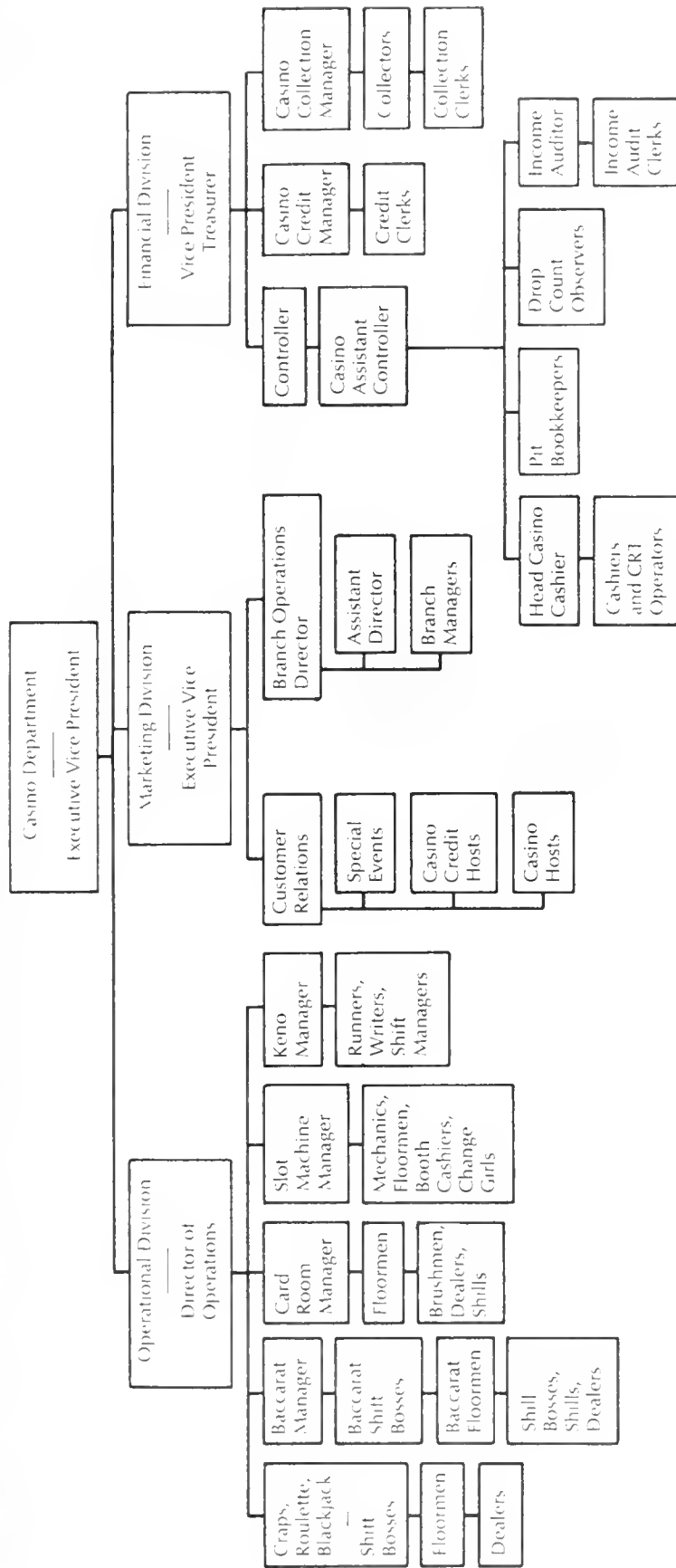
enterprise that supplies the casinos with information concerning the customer's previous gambling experience throughout Nevada and in other areas of the world. On the basis of this information, the customer's request for credit will either be granted in full, in a lesser amount, or denied completely. In cases where particularly large sums of credit are requested, more extensive checks are conducted. In some cases, customers request an extension in the amount of credit they are normally allowed. Such extensions, if granted, are generally limited during a single visit to 25 percent over the customer's original limit. Daily computer printouts are issued showing all changes in credit limits, the amount of unused credit available to each customer, the frequency of visits to the casino, and the promptness of payment.

When a customer first establishes credit at the casino, he is asked how he intends to settle his obligations. Many customers pay their entire debt upon their departure; some request that their markers be converted to a bank check to be deposited upon their departure. Still others request that a statement be mailed to them at their home or business. Debts not paid upon the customer's departure are handled by the casino's collection department, which employs standard collection techniques such as billing and telephoning to remind the customer of his obligations. In the case of delinquent debts, personal visits may be made or telegrams sent requesting payment. Accounts that have not been settled within 6 months are sent to a collection agency or to an attorney who will attempt to make the collection. (Nevada law stipulates that gambling debts are not legally enforceable in that State.) If these methods fail, the debts have to be written off as uncollectable. Approximately 3 percent of all credit extended by the casino results in bad debts. The casino has recently designed new computer printouts that show the State of residence of the customer, the casino employee who initially granted the credit, and various other information designed ultimately to minimize these losses.

Once a customer has established his credit rating, he may, upon approval of the appropriate pit boss, receive cash or chips on credit during the course of actual play.

**COMPLIMENTARIES.** The Golden Grotto, like most of the Strip casinos, spends a large portion of its operating budget (about 15 percent) on the provision of complimentary rooms, drinks, food, entertainment, and air transportation to its preferred customers—the high rollers. The Strip casinos depend upon a steady flow of upper-middle class and wealthy customers. Without such a clientele, they could not maintain the high quality of entertainment, food, and other services for which they have become famous. The casino's complimentary policy is continually scrutinized to determine whether the costs involved are producing the desired results. Formal written policy specifies who may receive complimentaries, how much they may receive, and by whom such privileges may be granted. The activities of customers who have received complimentaries are closely monitored, and the cost of the complimentaries is measured against the value of the

CHART 5-2.—CASINO DEPARTMENT ORGANIZATION AND STAFFING



chips purchased, the length and frequency of the customer's gambling activities, and the dollar amounts wagered. This information, along with additional data supplied by a computer, is translated into a rating of the customer's overall profitability. If the cost of the complimentary becomes excessive in relation to the customer's gambling activity, the customer may be politely advised that he risks losing his complimentary privileges. If such a customer is part of a group, the group organizer will be asked not to reinvite the guest. The cost of the complimentary is recorded as an expense of the Casino Department and as revenue for the departments providing the service. Approximately 11 percent of the restaurant and hotel revenues consist of complimentary charged to the casino.

**JUNKETS.** Junkets—organized group trips to Nevada casinos—are an important source of income for the Golden Grotto and some of the other Strip casinos. They account for approximately 13 percent of the hotel's occupancy rate and are particularly useful along with conventions in filling the hotel and casino during those times of the year when business is normally slower. Not all of the Strip casinos actively promote junket business, however, partly because of the difficulty of operating them profitably. Since junket participants receive free rooms, food, and beverages, the casino stands to lose money unless the participants gamble fairly heavily. No one is invited on a junket unless the casino has assured itself of the customer's ability (if not his intention) to satisfy the gambling and credit obligations that are implicit in the invitation. Theoretically, out of each \$1,000 a customer loses through wagering, the casino's profit is about \$200, or 20 percent. Thus, for a junket that costs the casino \$500 per customer, each participant must gamble at least \$2,500. Junket customers who gamble too conservatively are not reinvited.

Establishments that accept junkets are always alert to attempts by junket operators to defraud the casino. As discussed earlier, some casinos have incurred heavy losses as a result of clever and complex junket schemes. In some cases, the organizer alone is responsible for the fraud; in others, the participants are accomplices. Because such schemes generally involve interstate travel, the Federal Government—principally the FBI—is actively involved in investigations of suspected junket fraud.

**TIPPING.** Casino employees are permitted to accept tips from gaming customers. However, as a precaution against collusion between individual employees and customers, all gratuities are combined into a single pool and divided equally among employees. It is not uncommon for dealers, croupiers, and other gaming employees in the larger casinos to earn more from tips than from their basic salaries.

**INTERNAL CONTROL.** The methods a casino uses to count its winnings, insure the integrity of its employees, and monitor the movement of cash, chips, and credit comprise

its system of internal control. State gaming regulations require that casinos submit for approval and thereafter follow the specific accounting and internal control procedures they have developed. These procedures must conform with standards set by the American Institute of Certified Public Accountants.

The cashier's cage is the hub of the casino operation. It is accountable at any time of the day for a specific inventory consisting of cash and chips, credit markers, fill requisitions (showing chips brought to tables), and credit slips (showing chips removed from tables).

A unique aspect of casino operations is that the determination of "sales" (wins or losses) must be made on the basis of an inventory accounting rather than on the basis of individual sales transactions. Cash and credit markers received at each gaming table are deposited by the dealer into a locked box attached to the table to which no one in the pit has access. Security guards remove the box at the end of the shift and take it to the "count room." In order to determine how much money has been won or lost, cash, chips, and credit markers from each table are inventoried for each 8-hour shift and compared against the beginning inventory of chips for each table (see table 5-10). On this basis, a win/loss percentage is derived. In order to insure the accuracy of the inventory, detailed procedures have been developed to control all of the different types of transactions possible at the gaming tables—e.g., the exchange of cash for chips or credit, the processing of fill and credit slips, and the movement of cash from the tables and slot machines to the count room.

TABLE 5-10.—CASINO INVENTORY FORMULA,  
ROULETTE TABLE R-1

Beginning inventory of chips at table R-1	\$1,000
Plus fills (chips brought to table from cage)*	+\$ 500
	\$1,500
Minus credits (chips brought from table to cage)*	—\$ 600
"Inventory Available"	+\$ 900
Inventory of chips at table at end of shift	+\$ 800
Minus "Inventory Available"	—\$ 900
Change in chip inventory	—\$ 100
Plus cash in box (at table) and credit markers	+\$ 400
Net win or loss	+\$ 300
Win or loss percentage	+33 percent

\*During the course of play, the table may require additional chips if it has been losing fairly steadily. When the table wins a great deal, overflow chips are returned to the cage.

The following are the principal features of the Golden Grotto's system of internal control.

1. Count room. The count room at the Golden Grotto is completely glass enclosed. The entire counting process can be watched by casino personnel as well as by State regulatory agents, IRS, or other government personnel.



Access to the count room is strictly limited. State regulations stipulate that at least three persons must participate in the counting process. Not more than two of them may be licensees, and not more than one may own more than 5 percent interest in the gambling establishment. At the Golden Grotto, the three counters are in completely different income brackets, a situation the management believes minimizes the potential for collusion among the counters. Only two counters are required at smaller establishments.

2. Employees. The casino makes a special effort to employ personnel who are reliable and honest. On the job, employees' actions are constantly monitored. Dealers are watched by floormen, floormen by pit bosses, pit bosses by shift bosses, and shift bosses by the casino manager, and all are watched by overhead observers on enclosed catwalks (the "eye in the sky"). This pyramidal system of "people watching people watching people" makes large-scale theft difficult to engineer. All gaming employees are required to have a registration card indicating that their photographs and fingerprints are on record with either the city, county, or Gaming Control Board.

3. Closed-circuit television. The Golden Grotto has installed a sophisticated videotape system with cameras placed at strategic locations around the casino. The cameras can zoom in on action at any of the gaming tables as well as the count room and the cage area. Videotape is stored for later viewing in cases where irregularities are suspected. The cameras help deter cheating by customers and employees.

4. Armed guards. The casino employs a team of armed security guards who protect the movement of cash and chips in the casino.

5. Document control. A series of prenumbered forms is used for credit and other transactions. Several persons must participate in each transaction, and all transactions are reviewed by various departments, including the casino's internal auditing section.

6. Management reports. Daily computer printouts are available showing win/loss figures for each gaming table and slot machine. Gross variations from the average performance of a particular table or machine may indicate the existence of fraud or the need for further surveillance of the table or slot machine in question.

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## CASINO AUDITABILITY

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One of the most frequently asked questions concerning Nevada casinos is: Are they auditable? State regulatory and IRS agents have more than a passing interest in this issue. Both the State and the Federal Government are determined to insure that they receive their fair share of gambling taxes. In some of the larger casinos, ever-present IRS agents scrutinize every document and record available. In addition to the tax concern, the State is interested in preventing the appearance as well as the fact of wrongdoing in the areas of recordkeeping and income reporting. State auditors conduct regular and unscheduled audits of casino records and monitor the casino's internal control system. State accounting regulations prescribe specific financial reporting procedures for casinos.

State regulations also require casinos to contract for the services of independent, outside auditors to examine their financial statements. The National Gambling Commission heard testimony from a member of an independent accounting firm with experience in auditing casino operations. The witness testified that, in his opinion, a casino that maintains proper records and reliable administrative and control procedures is as auditable as any other business enterprise with similar attributes.<sup>17</sup>

With respect to casino operations, the area of greatest concern to the auditor is verification of gaming revenue and other receivables. The auditor must be able to

determine how much money the casino has actually collected and whether all of the revenue earned but not yet collected (credit) has been properly recorded. Proper recordkeeping and an airtight system of internal control are the key to the casino's auditability.

In the past decade, significant progress has been made in updating and improving accounting and internal control procedures within the casinos. State accounting regulations have been strengthened. The introduction of modern management principles has helped improve casino operations as well as foster honest income reporting. For example, with each department of a hotel/casino now expected to turn a profit, there is no longer the intense pressure on the casino to make up in gaming revenue what the hotel and restaurant have lost by offering casino patrons below-cost rooms, entertainment, and food values. This outdated marketing technique proved too costly for some of the casinos, which attempted to increase their gambling profits by failing to declare them. The acquisition of casino properties by publicly traded corporations also has tended to encourage proper recordkeeping.

Continuing refinements in State gaming regulations, improvements in casinos' internal control systems, and advances in computer recordkeeping technology should further enhance the auditability of gaming establishments and eventually dispel the skepticism that lingers in some quarters as to the integrity of casino operations.

## GAMBLING SURVEY RESULTS

The National Gambling Commission survey of American gambling behavior and attitudes included a number of casino-related topics, among them the demographic characteristics of casino bettors, bettors' perceptions of the consequences of casino gambling, their reasons for gambling at casinos, and their views on legalization. The survey also included a special section on Nevada designed to measure the impact of legal gambling—particularly casinos—on people who have ready access to it.

Twenty-seven percent of the total number of people surveyed said they had gambled at a casino sometime in their lives. Ten percent stated that they gambled at a casino in 1974, which translates to a projected figure of 14 million people nationwide who gambled at a casino—legal or illegal—that year. The majority gambled in Nevada; about a third went to casinos outside the United States.<sup>18</sup>

Following are additional highlights of the survey findings. (NOTE: The data in tables 5-11 through 5-15 exclude Nevada residents unless otherwise indicated.)

- Demographics (table 5-11). Proportionately more men than women, and more blacks than whites, gambled at casinos in 1974. Casino gambling was most popular among persons aged 25 to 64; participation dropped sharply after age 64. Almost a third of the residents of western States gambled at a casino in 1974, compared to 9 percent of those in the Northeast and 2 percent of those in the South. Casino gamblers were generally in the middle and upper income brackets and were well educated, having either some college or a college degree.
- Reasons for Gambling (table 5-12). The most frequent reason given for gambling at a casino was to have a good time. A significant number of respondents also cited the opportunity to make money, but only a very small number—7 percent—cited the chance to get rich as a reason for their gambling. The most frequent reasons given for not betting at a casino were “don’t know about it,” “not interested,” and “other things to do.”
- Consequences of Casino Gambling (table 5-13). Respondents were asked to judge the consequences of casino gambling. The majority—particularly Nevadans—cited the creation of more jobs and the generation of more money to run government as the most important positive consequences. The negative consequences most frequently cited were that casinos induce people to gamble more than they can afford, that they influence children to gamble, and that they attract racketeers. Nevada residents placed less emphasis on the latter two consequences than did respondents overall.

- Law Enforcement (table 5-14). Survey participants also were questioned about the law enforcement consequences of legal gambling. While Nevadans generally rated casinos more favorably than respondents overall, the majority, including Nevada residents, stated that casinos caused no change in peoples’ respect for law or in the levels of police and political corruption.
- Legalization (table 5-15). Almost 75 percent of all casino bettors and 85 percent of Nevada residents surveyed said they favored legalization of casinos and slot machines. But more than half of all respondents (bettors and nonbettors combined) expressed their opposition to legalized casinos.

TABLE 5-11.—DEMOGRAPHIC CHARACTERISTICS AND CASINO BETTING

	Percent of total sample who bet at casinos in 1974
Total Sample	9.6
Sex	
Male	10.5
Female	8.9
Age	
18-24 years	6.4
25-44 years	12.0
45-64 years	10.2
65 and over	3.5
Region	
Northeast	9.3
North central	4.9
South	1.9
West	31.1
Family Income	
Under \$5,000	4.1
\$5,000-\$10,000	8.3
\$10,000-\$15,000	6.4
\$15,000 and over	14.2
Education	
Less than high school	4.3
High school graduate	8.4
Some college	14.9
College graduate	15.9
Race	
White	9.4
Nonwhite	11.0

TABLE 5-12.—REASONS FOR BETTING OR NOT BETTING AT CASINOS

	Percent
Reasons for betting:	
To have a good time	81
For excitement	47
Challenge	35
To make money	35
To pass the time	23
Something to look forward to	21
Chance to get rich	11
Net activity reasons	94
Net money reasons	43
Reasons for not betting:	
Not available	48
Don't know about it	27
Not interested	26
Other things to do	23
Don't think about it	22
Odds against you	22
Don't want to lose money	16
Don't have the money	16
Waste of money	14
Illegal	10
Not lucky	8
Net money reasons	53
Net activity reasons	55
Net moral reasons	8
Net legal reasons	12

Note: Respondents chose one, two, or three reasons from a list of 11 reasons provided for betting and 18 reasons provided for not betting.

TABLE 5-13.—BETTORS' ATTITUDES TOWARD CASINOS

	Percent	
	Nevada residents	National sample
Positive Consequences:		
More jobs	88	69
More money to run government	87	66
Less money for organized crime	46	45
More chance for the common man to get rich	22	18
Negative Consequences:		
More people working less because they are gambling	21	43
More chance that children will be influenced to gamble	42	66
More racketeers connected to it	41	61
More people gambling more than they can afford	78	76

TABLE 5-14.—BETTORS' PERCEPTIONS OF LAW ENFORCEMENT CONSEQUENCES OF CASINO GAMBLING

	Percent	
	Nevada residents	National sample
Respect for Law:		
More	36	17
Less	7	20
No change	57	62
Police Corruption:		
More	13	26
Less	25	16
No change	62	53
Political Corruption:		
More	32	32
Less	17	10
No change	51	51

Note: Where responses do not add up to 100 percent, the remainder provided no answer.

TABLE 5-15.—ATTITUDES TOWARD LEGALIZATION OF CASINOS AND SLOT MACHINES

	Nevada residents	Percent Casino bettors	Total sample
Casinos:			
Favor legalization	85	74	41
Do not favor legalization	5	24	53
Don't care/don't know	10	2	6
	100	100	100
Slot Machines:			
Favor legalization	84	68	40
Do not favor legalization	5	28	54
Don't care/don't know	11	4	6
	100	100	100

## The Impact of Legalized Gambling in Nevada

Survey results indicate that the widespread availability of legal gambling—particularly casinos—generates measurably higher rates of participation by Nevada residents.

Seventy-eight percent of those questioned in Nevada bet on something in 1974, compared to 61 percent of the

national population (table 5-16). The incidence of betting is approximately 10 to 20 percent higher in Nevada among almost all demographic groups. The survey results tend to support the arguments of those who claim that establishing Nevada-type gambling in densely populated areas will foster participation by those who can least afford it. Although participation rates among all income categories increase as income increases, there are proportionately many more bettors among Nevada residents earning less than \$5,000 a year than among the general population of bettors in the same income category. The same phenomenon is reflected with regard to education levels.

In addition, gambling is much more regressively related to income in Nevada than in the United States as a whole (table 5-17). Gambling is said to be regressive if people in the lower income groups spend a higher percentage of their income on it than people in the higher income categories. If the percentage of income spent on a particular type of gambling increases as income increases, that activity is said to be progressive. The most significant difference in regressivity between Nevada and the United States as a whole occurs with respect to casino gambling. Residents of other States must travel to Nevada before they can participate, and the high cost of travel precludes participation by most low-income people. This gives casino gambling a progressive relationship to income for participants outside of Nevada. But because casinos are accessible to Nevadans in all income groups, they become highly regressive within the State. Even when travel costs are not a factor, as in the case of bingo, gambling tends to be more regressive in Nevada. These findings seem to suggest that low-income people are more readily attracted to gambling than are the more wealthy members of the community. The expanded popularity of gambling that accompanies extensive legalization thus appears to increase the regressivity of gambling as a revenue source. On the whole, as table 5-17 shows, gambling expenditures in Nevada are far more regressive than the average sales or excise tax.

Survey findings also indicate that the widespread availability of legal gambling causes an increase in the incidence of compulsive gambling behavior.<sup>19</sup> Approximately 2.62 percent of Nevadans were classified on the basis of their reported gambling habits as probable compulsive gamblers, and an additional 2.35 percent were classified as potential compulsive gamblers. This means that there are more than three times as many probable compulsive gamblers in Nevada than among the general population and about the same number of potential compulsive gamblers (table 5-18). Additional survey data indicate that 93 percent of the probable compulsive gamblers in Nevada, compared to only 15 percent nationwide, wagered more than 10 percent of their family income on legal forms of betting.

TABLE 5-16.—COMPARISON OF DEMOGRAPHIC CHARACTERISTICS OF BETTORS, NEVADA RESIDENTS AND NATIONAL SAMPLE

	Percent who bet in 1974	
	Nevada residents	National sample
Total Sample	78	61
Male	87	68
Female	70	55
White	79	62
Nonwhite	66	52
18-24 years	75	73
25-44 years	86	69
45-64 years	80	60
65+ years	41	23
Income under \$5,000	63	24
\$5,000-\$10,000	74	51
\$10,000-\$15,000	78	69
\$15,000+	85	74
Married	80	62
Divorced/separated	78	71
Widowed	54	18
Never married	78	70
Did not graduate high school	71	44
High school graduate	82	66
Some college	80	72
College graduate	78	79

TABLE 5-17.—REGRESSIVITY OR PROGRESSIVITY BY TYPE OF GAMBLING, NEVADA RESIDENTS AND NATIONAL SAMPLE

Game	Index of progressivity (P) or regressivity (R)	
	Nevada residents	National sample
Number	—	.44(R)
Sports cards	(s)	.40(R)
Lottery	—	.31(R)
Bingo	.58(R)	.30(R)
Horse books	(s)	.27(R)
Horse tracks	(s)	.17(R)
Off-track betting parlor	.56(R)	.07(R) <sup>a</sup>
Slot machines	.41(R)	
Keno	not asked	.26(P) <sup>b</sup>
Casino tables	.46(R)	
Legal sports betting parlors	.36(R)	—
Illegal sports books	(s)	.29(P)
All games combined	.42(R)	.17(R)
For comparison: all sales and excise taxes		.59(R)

<sup>a</sup>New York OTB only.

<sup>b</sup>Figure represents slot machines, keno, and casino tables combined.  
(s) = Sample too small to permit reliable estimate.

Table 5-19 shows what the increased participation rates among Nevada residents mean in terms of the popularity of individual types of gambling and the average amounts wagered on each. Legal horse and sports betting play only a minor role, both in comparison to other types of gambling in Nevada and to participation rates nationwide. A comparison of legal and illegal participation indicates that the widespread availability of many forms of legal gambling causes decreased participation in the illegal varieties. Participation in illegal gambling is almost three times greater among the general population than among Nevada residents. Since the survey was conducted before the 10 percent Federal excise tax on legal sports and horse wagers was reduced to 2 percent, the incidence of this type of illegal wagering in Nevada could well be lower today than table 5-19 indicates.<sup>20</sup>

TABLE 5-18.—COMPARISON OF COMPULSIVE GAMBLING, NEVADA RESIDENTS AND NATIONAL SAMPLE

	Percent			
	Potential compulsive gamblers		Probable compulsive gamblers	
	Nevada	National sample	Nevada	National sample
Men	3.8	2.7	3.3	1.1
Women	1.1	2.0	2.0	0.5
Total	2.35	2.33	2.62	0.77

TABLE 5-19.—COMPARISON OF GAMBLING BEHAVIOR, NEVADA RESIDENTS AND NATIONAL SAMPLE, 1974

Games	Percent of adult population who participate		Average annual wager per bettor	
	Nevada	National sample	Nevada	National sample
<b>Legal:</b>				
Horseraces (on-track)	3.2	13.7	\$103	\$ 448
Off-track betting parlors	6.0	8.7 <sup>a</sup>	179	1,183
Slot machines	72.1	—	377	—
Keno	54.2	9.4 <sup>b</sup>	not asked	448 <sup>b</sup>
Casino games	27.3	—	846	—
Bingo	24.1	18.7	104	69
Lottery	—	50.3 <sup>c</sup>	—	23
Sports betting parlors	8.0	—	158	—
Total legal commercial	76.0 <sup>d</sup>	44.0 <sup>e</sup>	\$665 <sup>d</sup>	\$ 273
<b>Illegal:</b>				
Sports books	2.9	1.9	\$275	\$ 623
Horse books	1.9	2.4	131	417
Numbers	0.0	3.0	0	273
Sports cards	3.0 <sup>f</sup>	3.2	36 <sup>f</sup>	44
Total illegal	4.3	11.2	\$257	\$ 318

<sup>a</sup>New York OTB only.

<sup>b</sup>Figure represents slot machines, keno, and casino games combined.

<sup>c</sup>States with legal lotteries only.

<sup>d</sup>Includes sports cards.

<sup>e</sup>Includes dograces, jai alai, and other legal forms of gambling not shown above.

<sup>f</sup>Sports cards are legal in Nevada.

## CASINO GAMBLING IN PUERTO RICO

The Commonwealth of Puerto Rico is the only American jurisdiction outside of the State of Nevada where legal casino gambling is operated. Gambling has traditionally been a part of Puerto Rican culture; gaming houses, cockfighting, and horseracing existed in Puerto Rico during Spanish sovereignty. However, it was not until the emergence of the tourist industry as a major source of revenue to the island that casino gambling was legalized. The Games of Chance Act, permitting the operation of

casinos, was passed on May 15, 1948, and the casino regulations followed on August 22, 1949. The primary force behind passage of this legislation was the desire to develop tourism. Prior to that time, various casinos operated sporadically, patronized primarily by Puerto Ricans. With the legalization of casino gambling, however, patronage changed radically: Ninety-two to 95 percent of the players now consist of visitors to the Island.

The political policy toward gambling has been one of

strict government intervention designed to discourage major scandals and unlimited gambling profits. The Commonwealth attempts to prevent dominance of gambling as a tourist attraction, and encourages it only so long as it remains just one of several attractions offered to visitors. Such close supervision has led to an image of fair play and integrity of operation in Puerto Rican casino games. That image is further promoted by the continuous presence of government inspectors in the casinos who test the equipment and scrutinize the play. These inspectors are employed by the Tourism Development Company, the governmental agency vested with authority over gambling operations and regulation.

Other regulations which have been enacted with an eye toward preserving the dignity of the surroundings include a strict dress code for players as well as employees, prohibition of alcoholic beverages or inebriated persons within the casinos, specifications as to the size of hotels that may be permitted to house casinos, minimum and maximum limits on wagers, and specific hours during which casinos may be operated. Adding to the rigidity of

these regulations is the fact that any change requires approval by the Legislative Assembly.

The economic impact of casinos has been substantial. Approximately 63 percent of the total number of hotel rooms in Puerto Rico belong to hotels with casinos, and these hotels provide employment to 81 percent of all those employed in the tourist industry. The 11 hotels with casinos clearly represent the base of the island's tourist industry. In recent years, however, casinos' contributions to the economy have been diminishing. Several factors have been cited as contributing to this diminution: the general economic contraction of the entire tourist industry, spiraling labor costs and benefits, and taxation. Some attempts have been made to alleviate the problem: Hotels, but not casinos, for instance, enjoy tax exempt status. Permission has been granted to hotels with casinos to charge an overhead deduction against the casino operation in proportion to the total gross income derived from hotel and casino operations, thereby providing a partial subsidy to casino operations.

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## CASINO GAMBLING IN GREAT BRITAIN<sup>21</sup>

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In 1968, the Parliament of Great Britain passed the Gaming Act, which, among other things, officially acknowledged that the people of Great Britain want to gamble and had in fact been playing casino games illegally. Passage of this act had three major objectives: reduction of the criminal elements present in illegal gaming parlors; restriction of excessive profits derived by the operators of gaming places; and the provision of acceptable, well-controlled, and supervised surroundings in which could be met the "unstimulated demand of the indigenous population" for casino gaming. A gaming board was established to serve as the regulatory and supervisory entity; this board was granted extraordinary powers based on the view that gaming could be socially destructive if not properly regimented. Among the powers of the gaming board is the initial investigation and clearance of applicants seeking a gaming license. As a first step, each applicant must obtain a certificate of consent from the gaming board. If the certificate is denied, the applicant has no right of appeal and is barred from proceeding further. If the certificate is granted, the applicant may then seek a gaming license from the local justices. Restrictions placed on casinos in Great Britain make gaming there very unlike the wide-open gambling in Nevada. These restrictions include:

**MEMBERSHIP CLUB FORMAT.** Any organization wishing to conduct commercial casino gaming in Great Britain must do so as a membership club. This format allows the imposition of certain restrictions such as dress requirements and selection of patronage. Furthermore, the imposition of membership fees could be viewed as an attempt to limit gaming facilities to those persons with the resources to indulge in this activity. This membership requirement carries with it the "48-hour" rule—under it,

a person, in order to use the club facilities to gamble, must make application for membership in writing on the premises at least 48 hours before he is permitted to gamble, or, if he already is a member, he must give notice on the premises of his intent to gamble at least 48 hours before being permitted to do so. This rule attempts to prevent impulse gambling and is viewed as protective of the local population, who are prevented from impulse gambling by having time to reconsider during the 48-hour waiting period. Although *bona fide* guests of members are permitted to use the facilities upon compliance with the 48-hour rule, junkets are strictly prohibited.

**RESTRICTION OF CASINO ACTIVITY.** Unlike the 24-hour operation of Las Vegas casinos, casinos in Great Britain must restrict gaming to the hours between 2 p.m. and 4 a.m. In addition, British gaming law includes a proscription against the serving of alcoholic beverages within the gaming area, a prohibition against tipping of employees at the gaming tables, a restriction of slot machines (known as fruit machines) to two, and a prohibition against live entertainment on the casino premises. These restrictions are intended to prevent inducements to gamble and to frustrate impulse gambling. Thus, if a person desires to gamble despite the lack of added attractions and despite the membership requirements, he is able to do so, but he will not have been stimulated to gamble through the lure of flashy surroundings and entertainment.

**PROHIBITION AGAINST GRANTING OF CREDIT TO PLAYERS.** Unlike Nevada, Great Britain does not permit the granting of credit in its casinos. A person must use cash or a personal check to obtain chips or gaming tokens; all checks held by the casino must be deposited in a bank within 48 hours and cannot be returned to the player. A

person may not redeem his check at the end of the evening for cash from his winnings at the tables. Similarly, a person writing several checks during the course of an evening cannot write one check consolidating the total amount of outstanding checks. It is believed that this rule also serves as a deterrent to impulse gambling, in that a person is made aware that he must have sufficient funds on deposit or sufficient liquid assets to enable him to meet the amount of the checks written. Furthermore, this system is thought to protect against extraordinary methods of collection being used: Since a check constitutes a legally enforceable instrument, there is no need to rely upon collection agencies for settlement of outstanding debts.

**RESTRICTION OF ADVERTISING.** With one exception, British casinos are prohibited from advertising in newspapers or magazines which circulate primarily within the boundaries of Great Britain. This exception occurs

when, upon the granting of a license, the successful licensee is permitted to advertise—only once—that he has received a license and is open for business. This restriction is designed both for the benefit and protection of the indigenous population, and to prevent the stimulation of interest in and demand for gambling.

Social, rather than economic, considerations are the motivating factors behind casino gaming in Great Britain; this is shown in part by the fact that no income tax is imposed on gambling winnings. At the present time, there are approximately 128 casinos operating throughout Great Britain, and these casinos are able to meet the “unstimulated demand of the indigenous population.” They have been located in areas where this unstimulated demand has been shown to exist, and they are far fewer in number than the illegal casinos in existence prior to passage of the act.

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## CASINO GAMBLING IN THE BAHAMAS<sup>22</sup>

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As in the Commonwealth of Puerto Rico, casino gaming in the Bahamas is viewed as a tourist attraction. In fact, only tourists are allowed to gamble in the Bahamas; resident Bahamians may not.

The present system is based on legislation passed in 1969 providing for a three-member gaming board with the power to grant casino licenses. Apart from the exclusion of residents and certain other restrictions, the Bahamian regulations are more like those of Nevada than of Great Britain.

- Live entertainment is permitted in casinos; the shows presented, however, must be of a “high standard”—a quality that is determined arbitrarily by the gaming board.
- Tipping of casino employees is allowed; however, the tips are pooled and divided among employees, with no share going to the casino operators.
- Employees of the casino, as well as players, must be 21 or older and are issued permits which must be renewed on a yearly basis.

- Gambling on credit is permitted, and copies of all markers or “IOU’s” are made available to the gaming board. Despite the fact that these markers are not collectable in Bahamian courts of law, taxes are assessed the operators on the total amount outstanding, whether or not the total is ultimately collected. As in Great Britain, however, no income tax is levied upon gambling winnings.
- Slot machines are permitted in Bahamian casinos, with a specific number allocated to each site; these allocations can only be increased by permission of the gaming board. Slot machines are the only form of electronic gaming equipment permitted in the casinos.
- Junkets, which provide a large source of business to the Bahamas, are encouraged. Most of these groups come from the Northeastern United States and Canada. The gaming board conducts background investigations of all junket organizers.
- Like those in Nevada, casinos in the Bahamas are open for business 24 hours a day, 7 days a week.

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## CONCLUSIONS AND RECOMMENDATIONS

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Proponents of legalized casino gambling in States other than Nevada generally put forth two major arguments in favor of their position. The first is that casino gambling will provide needed revenues to States; the other is that resort areas will become more popular tourist attractions with the added glamor of casino gambling. The Commission questions the validity of these two arguments.

The Commission does not believe that States should expect revenues from legalized casino gambling to ease their financial difficulties significantly. Casino gambling has not, to date, proved to be a financial panacea. The

State of Nevada, which offers an example of successful revenue-raising through legalized gambling, stands only sixth among States in total revenues derived from legal gambling. Although casinos may generate enough revenue to help meet the needs of a State with Nevada’s population, they are not capable of providing the resources necessary to support the costs of public services in heavily urbanized States. Compared to the costs of government, to say nothing of the potential social costs, the revenues that could be made by taxing or operating casinos in those States would be trivial.

When casino gaming was legalized in Great Britain, it

was done with an eye toward social rather than revenue-raising considerations. The regulations governing licensing and control deal primarily with protection of the local population; only secondarily do fiscal considerations figure into the overall plan. In fact, elimination of excessive profits to operators was a stated objective of the 1968 Gaming Act.

As to the potential increase in tourism, the Commission warns against promotion of casino gambling as a tourism stimulant where there is no pre-existing demand for this type of gaming. The legalization of casinos in Great Britain came about because many illegal casinos were already in operation throughout the country and were being heavily patronized by British subjects—to their financial detriment. The Commission does not believe that so extensive a demand for casino gambling exists in the United States today; it may well be that the casinos in Nevada and in such readily accessible areas as the Bahamas and Puerto Rico are more than sufficient to meet present demand. The Commission emphasizes that it does not view with favor the potential effect of casinos on the resident population, even in resort areas: the possible benefits that could accrue to local economies—assuming that the huge capital outlays necessary to construct competitive casino plants and attendant facilities could be secured and that competition among resort areas would not fragment the available market—might well be offset by social costs to the surrounding communities. The Commission's gambling survey indicates that Nevada residents participate in commercial gambling activities to a much higher degree than people elsewhere in the Nation, and that compulsive gambling is more prevalent in that State. In contrast to these findings, the Commission heard testimony from several Nevada witnesses who characterized the long-term Nevada resident as an indifferent gambler. These witnesses stated that when people first move to Nevada they may gamble excessively, but that after they become accustomed to the lifestyle there they tend to lose interest in gambling.

The Commission believes that Nevada—because of its relatively small and homogeneous population—is able to cope with the effects of overindulgence in gambling, whether it occurs to the extent indicated by the survey or to the much lesser degree reflected in the testimony of Nevada residents. The Commission believes, further, that densely populated areas are likely to find it much more difficult to cope with the effects of overindulgence. If Nevada-style casinos were legalized in heavily urban areas, participation by low-income people can be expected to result in increased social problems and an expanded need for government services, thereby offsetting in whole or in part any advantages derived from the stimulation of local businesses.

On the other hand, location of casinos in isolated or nonurban areas might well result in the urbanization of the previously isolated area. This in turn might cause a heavy increase in land speculation, with resulting damage to surrounding resort or vacation areas. Furthermore, this placement scheme would not be in keeping with the provision of casinos on a demand basis.

In sum, the Commission does not believe that any clear benefits would derive from passage of legislation in the various States to establish casinos. Although certain States might disagree, the Commission does not believe that casinos can produce sufficient revenue to offset their inherent social costs. However, if a State after having studied the potential consequences—still passes such legislation, **the Commission recommends that any legalization of casino gambling be restricted by the State to relatively isolated areas where the impact on surrounding populations can be minimized.** Although the Commission realizes that such a principle might not appeal to State policymakers who wish to stimulate existing resort areas, it nonetheless believes that the likely social effects of legalized casino gambling outweigh purely economic considerations.

Another factor to be considered is the possible impact of casino gambling on existing industries—not only on other forms of amusement and recreation, but on those forms of gambling which have been legalized for the purposes of raising State revenues. Would casino gambling reduce the handle at parimutuel racetracks or the sales of State lottery tickets? Or would the climate of further legalization stimulate these activities? Local market conditions play a major part in such developments and merit careful examination. **The Commission recommends that only in rare instances and extraordinary circumstances should casino gambling be permitted in a major metropolitan area; if this is done, the casino regulatory plan should be strictly monitored in order to insure special protection for the resident population.** For example, after viewing the experience of the British Government, **the Commission recommends that appropriate restrictions be employed to limit the participation of the local population in casino gambling.**

**Should a State decide to legalize casinos, the Commission recommends private enterprise as the best vehicle for insuring that they are effectively maintained.** For a State to take on the direct responsibility for operating and promoting casino gambling would raise substantial practical difficulties, would require the State to participate actively in the promotion of an entertainment business, and would invite the possibility of direct government involvement in any gambling-related scandals that might arise.

**Because scrupulously controlled private enterprise has proven successful in Nevada, the Commission commends that basic framework to any State wishing to legalize casinos.** Although serious questions arise as to whether a State that relies so heavily on a single industry for its revenue needs is truly capable of regulating that industry properly, particularly if that State's government is small in proportion to the size of the industry, the Nevada control structures have stood the tests of time and, often, bitter experience; the State's Gaming Policy Committee, Gaming Commission, and Gaming Control Board all seem to operate effectively and to commend themselves as models to other States.

Decisions rendered by the Gaming Commission can be tested by the appellate process in the courts, thereby



insuring judicial review of contested issues. The licensing procedure, including requirements of background investigation and full disclosure of ownership interests, are properly strict and thorough, and the statutory framework has been augmented by a comprehensive scheme of regulations, which have been continuously modified to adapt to changing circumstances. This Commission, would, however, encourage licensing of each employee involved in the actual conduct of a game. This would serve to insure the integrity of the games and enhance the reputation and credibility of the gambling operations.

The Commission recognizes that the State of Nevada has chosen to utilize slot machines to the fullest, and it takes no exception to the method of utilization employed or to the method of regulation. Although this form of gambling might be viewed favorably by a State's voters, it is one that can easily be abused, and thus should not be encouraged as a source of State revenue without accompanying restrictions on accessibility. The slot machine, by design, stimulates repeated play. Its ease of operation and physical design are specifically created to hold the player's attention. While the Commission recognizes the ingenuity of this design, it is concerned about the potential impact of slot machines upon players. For this reason, the Commission feels that the presence of slot machines in areas of public access, such as commercial nongaming establishments, should not be permitted. These devices should be restricted to areas of limited accessibility. The ease and repetition of play of the slot machine led the British Government to limit its availability because it was viewed as a possible inducement to addictive gambling when it is easily available to all segments of the public. **The Commission recommends that communities should not turn to this revenue-raising method lightly; but if slot machines should be legalized by a State, that State should adopt the British system of allocating a limited number of machines to specified locations, and maintaining vigilant regulation of the amount of payouts.**

The Commission recognizes that certain amusement machines—pinball machines, for example—are viewed by some persons as a form of gambling. The Commission does not share that view. While it believes that amusement machines require more regulation than presently exists, the Commission has determined that such machines fall outside the scope of its inquiry, and as such, are not subject to its scrutiny.

This having been said, the Commission now directs its attention to those areas of casino regulation in Nevada to which it takes exception. Although the regulations providing for the licensing and control of casinos in Nevada have proven themselves to be capable of protecting the interest of the State in promoting secure and profitable casino gambling, there remains one area not extensively covered by Nevada gaming regulations—player protection. Specifically, Nevada makes no provisions for setting odds, rates of payouts, minimum and maximum betting limits, hours of casino operation, and other factors directly relating to the impact of a casino on the people it is designed to attract. Nevada gaming

authorities believe that the competition created by the free enterprise system insures that the public will be treated fairly, meaning that if a particular casino repeatedly takes unfair advantage of its customers its business will decline. This argument notwithstanding, the Commission believes that if a State is planning to legalize casino gambling, at least for the partial purpose of raising revenue, it should bear the responsibility for protecting the interest of those whose gambling it sanctions and promotes.

In the Commonwealth of Puerto Rico, player protection is embodied in the enabling casino legislation. **The Commission finds many of these provisions to be commendable; however, it believes that such restrictions should take the form of regulations rather than statutory provisions.** Regulations having the same force as statutes have the advantage of being easily amended should the need for change arise. State policy in such areas must be kept flexible and adaptable so that State officials can regulate the impact of casino gambling and respond to changes in market conditions. These regulations, like the present regulations in Nevada, would stand within a rigid statutory framework of control over gambling, such as that provided by Nevada's Gaming Control Act.

The Commission wishes to point out that the diversity of the several States might well lead to various patterns of casino gambling for different areas of the country. Should a sparsely populated State wish to institute casino gaming, it may well wish to follow the example set by Nevada; on the other hand, a State such as New York may wish to institute casinos patterned after the British model of private clubs, with restricted entry for the protection of the resident population. In any case, the Commission sets out below several options that might be considered by States that have overcome the arguments against casino gaming and have decided to legalize casinos.

**EXTENSION OF CREDIT.** One alternative is the Nevada example, whereby credit is extended up to a certain amount, predicated upon verification of financial information provided by the player. Another option is that employed by British casinos, where only cash or checks are accepted in exchange for gambling tokens. It is believed that limitation of gambling to cash on hand or bank checks helps curb impulse gambling, and protects the player by not allowing him to gamble in excess of his liquid assets.

**ENTERTAINMENT.** Again, the Nevada and British examples offer different options. In Nevada, lavish entertainment, 24-hour liquor service in and around the gaming areas, and gourmet restaurants are accepted as a necessary and desirable feature of a gambling casino. In Great Britain, on the other hand, restaurants often adjoin the casinos, placed there on the assumption that a fine meal in elegant surroundings serves as a distraction from gaming rather than an inducement to gamble. Liquor may be served in the restaurant area and in lounges separated from the gaming area, but not in and around the gaming tables. The Commission believes that if liquor is to be permitted, the latter option is probably the preferable one.

**ADVERTISING.** In keeping with the policy of not stimulating additional demand for casino gambling, the gaming board of Great Britain has imposed a prohibition against advertising of casinos within the country. This policy, together with the prohibition against live entertainment, is believed to prevent impulse gambling predicated upon promotional materials. This is contrary to the Nevada policy, which permits unlimited advertising of the casinos themselves, the hotel facilities, entertainment, restaurants, and other amenities.

**MEMBERSHIP CLUB CONCEPT.** Restriction of public access has been deemed to be a desirable feature of casino gambling in Great Britain. To gamble in a casino there, one must become a member of a club, which can only be done by making application on the premises. Forty-eight hours after this application is accepted the applicant may gamble. Furthermore, after someone has become a member, he must give notice of intention to gamble 48 hours before he is allowed to. There is some disagreement over whether this restriction should be lifted for nonresidents, inasmuch as the purpose behind the limitation is to protect the indigenous population from impulse gambling. It is believed by some casino operators that the damage that results from turning away foreign visitors, some of whom are in the country for less than 48 hours, warrants the lifting of the "48-hour rule" for nonresidents only. In any event, the club concept does permit the imposition of additional restrictions which contribute to the maintenance of high standards, as well as serving as a deterrent to impulsive gamblers. For example, clubs may impose membership fees, the level of which may be set high enough to insure that no one who

cannot afford to gamble will be permitted membership. Dress codes may also be initiated by the club ownership.

In Great Britain, play is limited to the hours between 2 p.m. and 4 a.m., unlike the 24-hour-a-day play in Nevada, where casinos are open to the public seven days a week. The Commission has been told that Great Britain is perhaps more oriented to the club format in the daily lives of its subjects than is the United States, and that, for this reason, membership-club casinos have been successful there but would not be so successful in this country. Nevertheless, a State with legal casinos that might be interested in restricting the entry and frequency of participation of local residents might well wish to impose this type of limitation.

**TIPPING OF EMPLOYEES.** On this issue the systems of Great Britain and Nevada also differ. In Nevada, tipping of gaming employees by the player is considered to be a way of life; in Great Britain, it is strictly prohibited. Although formerly permitted in British casinos, it is now prohibited on the theory that tipping of employees gives them a vested interest in the outcome of play, and might ultimately lead to collusion between the employee and the player.

In conclusion, the Commission wishes to emphasize that, while it does not favor increased legalization of casino gaming, it believes that States considering this type of legislation should acquaint themselves with the various forms of regulatory policies that have been employed by other countries having expertise in the area. Although the Nevada system may be satisfactory for that State, other methods may prove more feasible for other States seeking to institute casino gambling.

# PARIMUTUEL WAGERING

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Parimutuel wagering is conducted in one form or another in 32 States that contain approximately 80 percent of the Nation's population. Most parimutuel wagering takes place at horse tracks—thoroughbred, harness, and quarter horse. Dogracing is the second most popular parimutuel event, while jai alai, the third, generates approximately one-eighth of Florida's gambling income and a barely measurable percentage of Nevada's. The newest form of parimutuel wagering is off-track betting, which is an extension of on-track betting and operates according to the same general principles as on-track

betting. Although it is conducted only in New York State and Connecticut, OTB is growing in importance as a new and potentially major form of legalized gambling.

This section examines the various aspects of the parimutuel industry—its history and development, its operation, the revenue it produces, and the problems that confront its principal components. The section also contains a brief description of the State regulatory bodies that govern parimutuel wagering and of the industry's many independent trade associations.

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## HISTORY

**HORSERACING.** Horseracing—commonly called the “sport of kings”—has evolved over the centuries from its aristocratic origins into a widely popular pastime. Crowds for racing meets are still increasing; racing is the most well attended sport in America.

Although the first recorded mounted horserace occurred in Greece in the seventh century, B.C., horseracing in one form or another appears to be at least 6,000 years old. Flat racing—in which a rider is mounted directly on the horse, not in a rig drawn by the animal—is about 3,000 years old. Racing gained its regal reputation and its greatest impetus in England, where it became a preoccupation of the monarchy from about the 12th to the 17th century.

The scientific breeding of thoroughbred horses is usually credited to the Duke of Cumberland in England in the 18th century. The first known thoroughbred horserace occurred in England in 1764.

The three principal forms of horseracing in the United States today are harness, thoroughbred, and quarter horse. Less common are Appaloosa, Arabian, and Paint horseracing. Harness racing is believed to have preceded flat racing by some 3,000 years, dating back to the era when horses were used as beasts of burden and before riders mounted the animals directly. The chariot races of ancient Rome were a fairly well-developed phase in the history of the sport. Today, although trotting has been called “the most typically American of all horse sports,”<sup>23</sup> its role in the racing economy is secondary to that of thoroughbred racing. In 1975, there were fewer thoroughbred than harness racing days but the thoroughbred handle was \$2 billion higher than the harness racing handle (see table 5-20). Nineteen States currently have authorized parimutuel wagering at harness races. Nighttime harness racing, a factor in the continuing success of the sport, began at Roosevelt Raceway in 1941.

There are a number of reasons why American racing is dominated by the thoroughbred. Its traditional appeal to those in a position to make important political decisions favoring the sport may be a factor in its proliferation. In the early Colonial days, concern over the

lack of quality horses in America prompted colonial governors to sponsor races as a means of identifying the fastest horses for selective breeding. The early races—attended primarily by the American “gentry”—eventually evolved into organized sporting events whose appeal transcended class lines.

One curious aspect of thoroughbred racing is that no one knows exactly what constitutes a thoroughbred. Today, in order to qualify as a thoroughbred, a horse must be registered with the New York Jockey Club. Only those horses may be registered whose sire and dam are registered, and, ostensibly, the lineage of all thoroughbreds must be traceable genetically back to the three prototypes of the breed, oriental stallions known as Godolphin, the Byerly, and the Darley. Anatomically, the thoroughbred is distinguished from other breeds of horses by its greater height and longer legs.

The quarter horse might be called the country cousin of the patrician thoroughbred. The quarter horse—whose name refers to the quartermile sprint it runs on the track—was developed in colonial Virginia by breeding native English horses to horses of Spanish ancestry, producing a swift hybrid for the short distances required for it. Unlike the thoroughbred, the quarter horse is bred not merely for racing and breeding, but for more utilitarian purposes as well, such as farm work and even transportation. In 1974, more quarter horses—some 1 million—were registered than all other breeds combined.

Despite the prevalence and versatility of the quarter horse, it plays a relatively minor role in the parimutuel industry. Quarter horse meets are often rural activities run at State and county fairs and other community functions. Parimutuel wagering on quarter horse races takes place in 16 States, usually in mixed races on thoroughbred programs. There is no parimutuel wagering conducted at about a third of all quarter horse races. In 1975, the total parimutuel handle for quarter horses was only \$140,345,856 (exclusive of the handle for mixed programs of thoroughbreds and quarter horses). In the coming years, however, the growing shortage of thoroughbreds may

TABLE 5-20.—COMPARISON OF THOROUGHBRED, HARNESS, AND QUARTER HORSE INDUSTRIES, 1975

	Total	Thoroughbred*	Harness*	Quarter horse*	Mixed*
Racing days	13,110	5,415	5,856	376	1,463
Number of races	126,147	51,247	57,494	3,566	13,840
Total attendance	78,662,370	43,147,357	28,214,042	1,586,168	5,714,803
Daily average attendance	6,001	7,967	4,818	4,219	3,907
Parimutuel handle	\$7,862,184,707	\$4,657,718,795	\$2,600,031,919	\$140,345,856	\$464,088,137
Daily average handle	\$599,709	\$860,152	\$443,995	\$373,261	\$317,217
Revenue to State	\$581,645,638	\$361,047,905	\$190,526,818	\$8,760,984	\$2,309,931
Number of States conducted in	30	19	19	4	9

\*The figures in the thoroughbred, harness, and quarter horse columns apply to racing programs that consist exclusively of one type of racing; the figures in the "mixed" column represent racing programs made up of thoroughbred and quarter horse races.

NOTE: Figures exclude OTB.

foster the growth of quarter horse racing, as more track owners begin using quarter horses to fill gaps in their thoroughbred racing programs.

The formal debut of horseracing in the American colonies took place in 1665, when a New York governor sponsored racing meets at the Newmarket track on Long Island. Although wagering became a factor in the sport almost immediately, horserace betting in the United States remained largely an upper class activity for about 200 years; its chief participants were the breeders and owners who supplied the animals. But by the mid-19th century the general public had developed an appetite for the sport and for the betting that seems indigenous to it.

To meet the needs of racing's expanding market, and to generate still more fans, racing entrepreneurs began to build huge new track facilities capable of holding tens of thousands and offering a festive, circus-like atmosphere for the players. New York's Belmont Park, which opened in 1905, was the prototype of these tracks; over the years, it was to be matched in scope and clientele by such parks as California's Santa Anita (1934) and New York's Aqueduct (1959), the Nation's largest.

As betting increased among racing fans at the new tracks, a new gambling figure emerged: the racetrack bookmaker. The bookie rapidly became the dominant figure in horse betting. Usually a knowledgeable habitué of the track, the bookmaker was the agent against whom the layman bettor wagered his own expertise and hunches. The bookie, was, in effect, the bettor's competition; with his insider's tips, his greater familiarity with the mechanics of the wager, and his frequently unscrupulous manipulation of jockeys and trainers, the bookie held the clear advantage.

The bookmaker's position in horse betting was weakened by the invention of the parimutuel system, in 1865, by a Frenchman. Parimutuel betting—now the dominant legal system in the field—offered a number of attractive innovations for the average bettor. It allowed him to bet against his peers, the other amateur bettors, instead of the professionals, the bookmakers. By allowing payoffs on second and third place finishes, it increased the bettor's chances of getting some return on his investment.

And by using machines to calculate odds, issue tickets, and provide payoffs, parimutuels went a long way toward eliminating the elements of corruption, fallibility, and arbitrariness that had often marked the bookmaker's trade. First used successfully at the 1908 Kentucky Derby, parimutuel betting is now legal at more than 150 racetracks in 32 States, and is the most popular form of legal gambling in the Nation. Contributing to its growth has been the introduction of long-odds bets that are called "exotic" bets: the exacta, the quinella, the trifecta, etc. Many track fans dislike exotic bets. One track owner said:

I consider normal betting on just one race at a time as wagering. The bettor tries to make an intelligent choice based on his knowledge of the horses, jockeys, and track conditions. The doubles and quinellas, on the other hand, are gambling—a matter of pure luck.

Nonetheless, exotic bets, no matter how "unscientific" they may be, remain popular.

**JAI ALAI.** Actually, the exacta and quinella are not the invention of the horseracing industry but of jai alai, which, along with dogracing, is one of only two sports to share a parimutuel betting system with horserace tracks. Jai alai (which means "merry festival") has been around since the 17th century, when it was devised by the Basques, but it has found favor as a professional sport among Americans only recently. Parimutuel betting on jai alai was legalized in Florida in 1935; only Nevada and Connecticut so far have followed Florida's example. Rhode Island has legalized the game but has not yet begun its operation. In the more than 40 years since jai alai has been regulated by the Florida Racing Commission, there has never been a charge of a fix, a fact jai alai enthusiasts claim make it the cleanest gambling game in the world.

**DOGRACING.** Although there are accounts of the use of greyhounds for sporting events in ancient Rome, the greyhound's principal historical role was that of a hunter whose speed and stamina were unmatched by any other canine breed. The earliest greyhound racing was a competitive version of the hunt. Two greyhounds would be released together in pursuit of a hare, and the race would be judged on the basis of the dogs' performance

during the chase. Called "coursing," this type of greyhound racing reached the height of its popularity in England during the reign of Queen Elizabeth I, when it first began to be called "the Sport of Queens."

The modern version of greyhound racing in America evolved from a coursing event held in South Dakota in 1904. The sponsor of the event, Owen Patrick Smith, developed an immediate enthusiasm for the sport along with a strong distaste for the killing of hares. Smith spent the next 15 years testing and perfecting a mechanical lure. These early devices were unwieldy contraptions that often would slam into a wall, fall off the track, or stop suddenly,

causing a pileup of dogs and machine. These mechanical difficulties were resolved with the invention of a folding arm that made the lure disappear while allowing the vehicle to continue around the track. But even with this new technology, greyhound racing did not achieve instant popularity. Many of the early races were conducted by unscrupulous fly-by-night promoters who gave the sport an unsavory reputation. Eventually, however, introduction of the parimutuel system of wagering along with more effective regulation fostered public acceptance of greyhound racing as a legitimate form of entertainment.

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## THE PARIMUTUEL SYSTEM

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The essence of the parimutuel system of betting is that bettors wager against one another instead of against a bookmaker. Of the total amount wagered on a particular race, approximately 82 to 85 percent is returned to winning bettors in the form of payoffs on the three winning horses—win, place, and show—and on combination (exotic) bets where they occur. The minimum wager per race is \$2, but larger bets in units of \$5, \$10, \$50, and \$100 also may be placed. The amount of money paid to winning bettors is determined on the basis of the total amount wagered on each horse or dog (or player in the case of jai alai). If a particular horse or dog is heavily favored during the course of betting, the payoffs on that animal if it wins will be much smaller than the payoffs on a winning horse or dog on whom little was wagered. For example, if a total of \$50,000 is bet on a particular race and \$10,000 of that amount is bet on a particular horse, the payoff odds on that horse will be 4-1; that is, for each dollar bet on this horse, \$4 has been bet on other horses. The odds on place, show, and exotic bets are not calculated in advance because too many horses and combinations are involved. The total amount bet on place bets is divided among ticketholders whose horse came in first or second; the amount wagered on show bets is divided among ticketholders whose horses came in first, second, or third.

Wagering computations are accomplished by a totalisator (tote) machine, which adds bets over and over again during the course of betting. Every 60 to 90 seconds the tote flashes the new betting totals and odds for each animal on a large toteboard. During the approximately 20 minutes before each race when betting occurs, the odds on each contestant may change dramatically. The machines contain a number of features designed to minimize the potential for parimutuel fraud or machine malfunction. These features include coded ticket paper and duplication of all critical functions by two computers working independently of one another. The most sophisticated of the modern tote machines not only compute and post odds but also maintain complete records of the betting activity on each race as well as postrace information on payoffs and uncashed tickets. Totalisators also are used in jai alai and for off-track betting and can be modified for use in lotteries and sports betting.

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### The Takeout

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The takeout is the portion of the parimutuel pool that is not returned to winning bettors. The amount varies among the States but generally ranges from 15 percent to 17 percent of the handle. The takeout is divided among the horse or dog owners' purses, the track, and the State in which the racing is conducted. The apportionment of the takeout among the three entities also varies from State to State. In some States the takeout on combination bets exceeds the straight bet takeout. In New York and New Jersey, for example, the takeout is 25 percent on three-horse combination bets. Often, the State receives half of the total takeout, and the remaining half is divided equally between the track and the horse owners. Purses in dogracing average 12 to 13 percent of the total takeout compared to about 25 percent for horseracing purses.

Three recent research efforts suggest that current takeout rates are too high. The first is an article based on data for New York tracks prior to the introduction of OTB and exotic wagering.<sup>24</sup> The author shows that the takeout rate yielding the highest revenue to the State in 1969 would have been 14.88 percent rather than the 17.16 percent that actually prevailed. He also estimates that this reduced takeout would have increased revenue to the State and tracks by \$1.1 million.

The National Gambling Commission also has undertaken research on this question. One study,<sup>25</sup> using data on per capita handle in the individual States for the years 1950 to 1974, estimates the optimal takeout rate at 12 to 13 percent. Another study,<sup>26</sup> using a more complicated model to explain handle at the New York tracks, places the optimal takeout rate at 12 to 14 percent. Although these efforts cannot be considered as absolutely conclusive, they do suggest that there has been some confusion between high tax rates and high tax revenue, and they underscore the need for more detailed research in this area.

In addition to the takeout, there is another, smaller portion of the parimutuel handle that is not returned to winning bettors. That money—called breakage—is the amount of each winning payoff that exceeds multiples of

5 or 10 cents. For example, if the payoff to a winning bettor is \$5.67, the bettor will receive only \$5.60, with 7 cents retained as breakage. Some States have provisions for a 5-cent breakage that only applies in specific cases. If, for example, the winning horse in a particular race is so heavily favored in the betting that there is not enough in the parimutuel pool to pay the winners (called a minus pool), the breakage may be reduced to 5 cents in order to provide additional money for the winners. Thus, on a payoff of \$2.27 a 10-cent breakage will yield the winning bettor \$2.20, while the 5-cent breakage will yield \$2.25. The distribution of the breakage monies varies among the States. Some States retain the entire sum; others return all or part of it to the tracks, and, in a few cases, a portion of the breakage is used to supplement purses, for breeder and owner awards, or for improvement of backstretch facilities for track personnel—jockeys, trainers, etc.

Finally, for every race there are some people who fail to cash in their winning tickets. The money from uncashed tickets goes either to the State, to the track, or is divided according to a specific formula. In addition to their share of the parimutuel handle, the States may collect money through taxes on track admission, parking, and from track and occupational licenses (discussed below).

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## Parimutuel Revenue

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Almost half of the \$19 billion handle from legal gambling in 1975 consisted of parimutuel wagers at horseraces and dograces and jai alai frontons. From the States' point of view, the most important aspect of this wagering is the money it generates for their overburdened treasuries. New York is the major parimutuel State; in 1975, it earned from parimutuel and related incomes \$162.5 million. Table 5-21 shows State revenues from parimutuel wagering on horseraces, dograces, and jai alai (excluding OTB) from 1970 through 1975. The figures

listed in table 5-21 include the State's share of the parimutuel takeout plus sums collected through track licenses, occupational licenses, breakage, admission taxes, and miscellaneous fees.

The increased revenue to the States from racing reflects increases in the overall attendance rate, in handle, and racing days. Inflation and the declining value of the dollar have contributed to an increase in the average per capita bet as well. Tables 5-22, 5-23, and 5-24 show the increases in handle and racing days, attendance, and per capita bet, for horseracing and dogracing from 1965 to 1975.

The number of racing days has increased in all States except four. The States have sought to expand the parimutuel revenue base as one means of meeting their spiraling revenue requirements. Paralleling the expansion of horseracing and dogracing has been the growth of other forms of legalized gambling such as lotteries and off-track betting, and movements to legalize forms of gambling such as sports betting and casinos.

Total racing attendance, although increasing, has not kept pace with the rate of growth in racing days. As a result, the average daily attendance rate has decreased by 23 percent for horseracing and 1 percent for dogracing in the past 11 years.

The significance of the increasing racing dates and decreasing daily attendance is difficult to gauge. There is no evidence that the popularity of racing is declining. The increases in total attendance and handle would seem to indicate that the opposite is true. Those within the racing industry are concerned, however, that the State's continuing desire for increased gambling revenues may one day cause the racing industry great harm. As will be discussed later in this section, the growth of racing dates ultimately affects the number and quality of horses and dogs available to race, the performance of individual horses and dogs, and the profitability of racing to horse, dog, and track owners.

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## PUBLIC ATTITUDES AND PRACTICES

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The National Gambling Commission survey of American gambling attitudes and practices revealed that 14 percent of the adult population—about 20 million people—bet on horseraces at the track in 1974. Four percent of the adult population—or 5.8 million people—bet on the dograces that year (table 5-25). Proportionately more men than women bet, more Northeasterners than Southerners. Betting at both horseraces and dograces tended to increase as income and educational levels increased. Betting participation peaked among those aged 25 to 44 and then began to decline. Particularly sharp reductions occurred after age 65. Betting at horseraces was three times more prevalent than betting at dograces, the most obvious reason being that there are more horse tracks than dog tracks in the country.

Additional highlights of the survey findings follow:

- Family Income and Betting (table 5-26). From the

standpoint of social policy, an important question is whether the percentage of income wagered by individuals rises or declines as income increases. As shown in table 5-26, families earning under \$5,000 a year spend a higher percentage of their income on horseraces than those earning more money. Although this makes horseracing a regressive form of gambling, it is less regressive than, for example, lotteries and numbers, which are particularly popular among low-income people.

The cost of gambling to any group is not the amount wagered, but the net loss to players—that is, the amount taken out and retained by the operators. Another way of measuring regressivity, then, is to compute the takeout as a percentage of income. The figures show that, as a source of revenue for the government, on-track horserace betting, like most

TABLE 5-21.—PARIMUTUEL REVENUE TO STATES (EXCLUDING OTB) 1970 TO 1975

State	Horse and dog racing (In millions)											
	1970		1971		1972		1973		1974		1975	
	Horse	Dog	Horse	Dog	Horse	Dog	Horse	Dog	Horse	Dog	Horse	Dog
Alabama <sup>1</sup>	\$—	\$—	\$—	\$—	\$—	\$—	\$—	\$—	\$—	\$—	\$—	\$—
Arizona	1.17	2.75	1.30	3.05	1.52	3.47	1.72	3.91	1.87	4.43	2.01	4.47
Arkansas	2.81	2.94	3.20	3.36	3.92	3.71	4.47	4.26	5.22	4.67	5.63	5.08
California	58.40	—	66.77	—	69.65	—	75.27	—	80.99	—	91.45	—
Colorado	.91	3.00	1.07	3.59	1.14	3.91	1.24	4.23	1.68	4.59	1.67	4.83
Delaware	6.95	—	7.90	—	8.69	—	9.41	—	9.50	—	7.96	—
Florida	18.64	28.96	19.20	31.97	19.59	35.01	23.21	39.45	25.81	43.96	25.49	45.40
Idaho	.17	—	.11	—	.13	—	.16	—	.14	—	.17	—
Illinois	46.57	—	50.26	—	48.53	—	53.10	—	62.03	—	66.10	—
Kentucky	6.78	—	7.41	—	7.95	—	8.78	—	10.75	—	11.23	—
Louisiana	5.07	—	5.40	—	6.41	—	7.15	—	7.98	—	10.26	—
Maine	1.83	—	2.06	—	1.42	—	(2)	—	—	—	1.15	—
Maryland	14.84	—	16.05	—	16.84	—	17.34	—	18.63	—	20.40	—
Mass.	12.86	12.72	14.23	14.74	14.80	14.96	17.60	15.24	17.45	14.63	18.64	13.62
Michigan	21.17	—	24.50	—	24.52	—	26.64	—	27.65	—	28.48	—
Montana <sup>2</sup>	.03	—	.03	—	—	—	—	—	—	—	—	—
Nebraska	2.43	—	2.75	—	8.34	—	4.18	—	4.59	—	5.26	—
Nevada	.05	—	(2)	—	—	—	(3)	—	(3)	—	(3)	—
New Hamp.	10.25	—	11.04	—	10.15	—	9.23	2.23	8.49	5.09	8.10	8.03
New Jersey	34.77	—	34.80	—	35.83	—	34.53	—	40.16	—	31.87	—
New Mexico	.93	—	1.16	—	1.54	—	1.72	—	1.93	—	2.12	—
New York	173.05	—	172.74	—	159.11	—	162.73	—	161.85	—	162.55	—
Ohio	17.35	—	17.37	—	16.36	—	18.41	—	20.57	—	24.26	—
Oregon	.85	1.69	1.16	1.39	1.45	1.51	1.55	1.64	1.57	1.84	1.86	2.05
Penn.	20.13	—	21.66	—	22.12	—	27.80	—	28.26	—	27.26	—
R. Island	12.24	—	9.37	—	10.46	—	8.02	—	10.47	—	7.04	—
S. Dakota	.19	1.28	.16	1.37	.20	1.27	.15	1.48	.14	1.47	.14	1.57
Vermont	2.97	—	3.09	—	2.73	—	2.59	—	2.59	—	2.63	—
Washington	2.59	—	2.97	—	3.29	—	4.44	—	4.33	—	4.98	—
West Va.	10.46	—	10.70	—	10.72	—	12.06	—	12.48	—	12.88	—
Wyoming	.09	—	(2)	—	—	—	.01	—	(4)	—	—	—
TOTALS	\$486.40	\$53.34	\$508.39	\$59.44	\$505.90	\$63.85	\$533.50	\$74.46	\$567.13	\$80.74	\$581.64	\$85.08

Jai alai  
Fiscal years

	1973	1974	1975	1976
Florida	\$8.45	\$9.81	\$11.10	\$12.79
Nevada	(figures not available)			
Connecticut	(Jai alai and dog racing began in 1976.)			

<sup>1</sup> Alabama revenues from dog racing go to the one county in which this activity is legal: Mobile County.

<sup>2</sup> No record available.

<sup>3</sup> Actual figures for 1973, 1974, and 1975 are \$8,304, \$7,869, and \$8,000, respectively.

<sup>4</sup> Actual figure for 1974 is \$6,495.

All figures rounded to nearest thousand dollars.

Source: National Association of State Racing Commissioners.

TABLE 5-22.—PARIMUTUEL HANDLE, HORSERACING AND DOGRACING, 1965-1975

Year	Horseracing				
	Total parimutuel handle		Racing dates	Average daily handle	
	Current dollars	1967 dollars		Current dollars	1967 dollars
1965	\$4,614,602,396	\$4,883,177,139	8,051	\$573,171	\$606,530
1966	4,784,092,584	4,921,905,951	8,384	570,622	587,060
1967	4,921,518,485	4,921,518,485	8,621	570,876	570,876
1968	5,309,950,348	5,095,921,639	9,051	586,670	563,023
1969	5,723,218,112	5,212,402,652	9,539	599,981	546,431
1970	5,977,358,676	5,139,603,333	9,962	600,016	515,921
1971	6,350,255,573	5,235,165,352	10,792	588,422	485,096
1972	6,401,582,132	5,109,004,096	11,478	557,726	445,113
1973	6,990,832,014	5,258,315,563	11,779	593,500	445,905
1974	7,512,555,213	5,086,361,012	12,211	615,228	416,539
1975	7,862,184,707	4,883,344,538	13,110	599,709	372,490
Percent change 1965-1975					
	+70	0	+63	+4.6	-39
Year	Dogracing				
	Total parimutuel handle		Racing dates	Average daily handle	
	Current dollars	1967 dollars		Current dollars	1967 dollars
1965	\$ 459,550,265	\$486,296,577	2,443	\$188,108	\$199,056
1966	496,885,684	511,199,263	2,865	173,433	178,429
1967	521,352,161	521,352,161	2,914	178,913	178,913
1968	579,176,136	555,831,225	2,949	196,397	188,481
1969	652,261,960	594,045,501	3,037	214,772	195,603
1970	730,039,761	627,721,205	3,023	241,495	207,648
1971	816,380,398	637,025,885	3,276	249,200	205,441
1972	878,100,355	700,798,368	3,247	270,434	215,829
1973	997,274,290	749,266,935	3,510	284,124	213,467
1974	1,164,059,259	788,124,075	3,842	302,983	205,134
1975	1,260,631,716	783,001,065	3,960	318,342	197,727
Percent change 1965-1975					
	+74	+61	+62	+69	-0.7

NOTE: Dollar values based on Table C-44, Economic Report of the President, February 1975.

TABLE 5-23.—TOTAL AND AVERAGE DAILY ATTENDANCE, HORSERACING AND DOGRACING, 1965-1975

Year	Horseracing		Dogracing	
	Total attendance	Average daily attendance	Total attendance	Average daily attendance
1965	62,887,478	7,811	10,864,750	4,447
1966	63,596,816	7,585	11,120,923	3,882
1967	63,372,895	7,351	11,453,623	3,931
1968	65,460,434	7,232	11,640,486	3,947
1969	68,098,615	7,139	12,005,734	3,953
1970	69,704,290	6,997	12,660,152	4,188
1971	73,619,044	6,882	13,666,462	4,172
1972	70,807,226	6,169	13,760,377	4,238
1973	74,682,716	6,340	14,776,065	4,210
1974	74,948,058	6,138	16,282,420	4,238
1975	78,662,370	6,001	17,457,586	4,409
Percent change 1965-1975				
	+25	-23	+61	-1

TABLE 5-24.—PER CAPITA BETTING,\* HORSERACING AND DOGRACING, 1965-1975

Year	Per capita bet*	
	Horseracing	Dogracing
1965	\$ 73.38	\$42.30
1966	75.23	44.68
1967	77.66	45.51
1968	81.12	49.76
1969	85.04	54.33
1970	85.75	57.66
1971	86.25	59.73
1972	90.41	63.81
1973	93.61	67.49
1974	100.24	71.49
1975	100.00	66.00
Percent Change 1965-1975		
	+37	+57

\*Derived by dividing total handle by total attendance.



TABLE 5-25.—DEMOGRAPHIC CHARACTERISTICS OF ON-TRACK BETTORS, 1974

	Percent who bet at	
	Horseraces	Dograces
Total Sample	14	4
Sex		
Men	16	6
Women	12	2
Region		
Northeast	20	5
North Central	12	4
South	10	3
West	16	4
Income		
Under \$5,000	6	2
\$ 5,000-\$10,000	12	3
\$10,000-\$15,000	10	5
\$15,000-\$20,000	16	3
\$20,000-\$30,000	19	5
\$30,000 and over	22	5
Education		
Grade school	8	2
High school	15	4
Some college	14	5
College degree	23	6
Age		
Under 25	14	6
25-44 years	17	5
45-64 years	13	6
Over 65 years	3	2

TABLE 5-27.—PERCEPTIONS OF LUCK VERSUS SKILL IN BETTING ON HORSES

	Percent			
	Betting at track		Betting with bookie	
	Legal bettors	Illegal bettors	Legal bettors	Illegal bettors
Almost all luck/more luck than skill	48	49	44	49
Equal amounts of luck and skill	32	26	32	26
Almost all skill/more skill than luck	20	25	19	25
Don't know	0	0	5	0

TABLE 5-28.—PERCEPTIONS OF RACE FIXING, 1974

	Total sample	Non-bettors	Track bettors	Illegal bettors	All bettors
Mean ratings					
Horseraces	2.89	2.69	2.94	2.96	2.99
Dograces	3.14	2.75	3.65	3.17	2.90

Ratings: 1 = Fixed most of the time  
 2 = Fixed pretty often  
 3 = Fixed sometimes  
 4 = Almost never fixed  
 5 = Never fixed

TABLE 5-26.—FAMILY INCOME AND HORSE RACE BETTING

	Family income						Total
	Under \$5,000	\$5,000-10,000	\$10,000-15,000	\$15,000-20,000	\$20,000-30,000	\$30,000 & over	
Residents of States with legal tracks							
Percent who bet	8.7	15.5	11.2	17.2	20.9	20.3	15.3
Average annual bet per bettor	\$186	\$294	\$396	\$577	\$294	\$436	\$513
Average annual bet per capita	\$16	\$46	\$44	\$99	\$61	\$88	\$78
Average annual takeout per capita	\$2.63	\$7.55	\$7.36	\$16.49	\$10.21	\$14.69	\$13.02
(Takeout rate: 16.6%)							
Residents of all States							
Percent of income bet at track in 1974 per capita	0.63	0.61	0.35	0.57	0.25	0.22	0.50
Percent of income taken out per capita	0.105	0.101	0.059	0.094	0.041	0.037	0.083
All types of gambling combined							
Percent of income bet in 1974 per capita	2.53	1.55	1.07	1.16	0.67	1.09	1.15
Percent of income taken out per capita	0.62	0.42	0.29	0.23	0.14	0.18	0.25

TABLE 5-29.—REASONS FOR BETTING AND NOT BETTING ON THE HORSES

Reasons for betting	Bet at track only	Percent	Bet at track and with bookie
		Bet with bookie only	
Interest: excitement, challenge	98	85	77
Money: make money, get rich	37	68	73
Reasons for not betting	Bet on other things but not horses	Percent	Bet with bookie but not at tracks
		Bet at track but not with bookies	
Lack of interest: don't know or think about it	77	60	75
Money: don't want to lose money, costs too much, waste of money	59	44	62
Legal consequences	11	34	5
Moral consequences	8	14	7
Social consequences	4	17	3

NOTE: Vertical columns add to more than 100 percent because respondents chose more than one reason. Respondents chose one, two, or three reasons from a list of 11 reasons for betting and 18 reasons for not betting.

other forms of gambling, constitutes a regressive form of taxation.

- **Luck Versus Skill** (table 5-27). Horserace bettors were asked how much luck or skill was involved in betting at the track and betting with a bookie. Almost half of the respondents rated betting on horses as consisting of almost all luck or more luck than skill. About a third rated luck and skill equally. People who bet illegally tended to place somewhat greater emphasis on skill than did legal bettors; one reason may be that illegal bettors are—or think they are—more skillful handicappers than those who confine their betting to the track.
- **Race Fixing** (table 5-28). Nonbettors, legal bettors, and illegal bettors alike perceived horserace fixing as something that occurs between “sometimes” and “pretty often.” Obviously, bettors’ lack of confidence in the honesty of the races did not prevent them from betting. Those who believe that winning is a matter of luck rather than skill probably feel that their chances of winning are not diminished by the occasional “fix.” Only casinos and numbers were perceived as less honest than horseraces. Dogracing received somewhat higher ratings of confidence than horseracing, probably because dograces—where no jockey is involved—are less susceptible to bribery.
- **Reasons for Betting** (table 5-29). Most people bet on horseraces and dograces to have a good time and not to make money or to get rich. Many people enjoy the excitement and challenge of a day at the races, and, in fact, betting on the races at the track was rated as the most exciting form of gambling. By contrast, those who bet with bookies attributed much more importance than did track bettors to the money aspects of wagering. The people most interested in making money were those who bet with bookies and went to the track as well. The only other forms of gambling in

TABLE 5-30.—DEMOGRAPHIC CHARACTERISTICS AND ATTITUDES TOWARD LEGALIZATION OF HORSE RACE TRACKS

	Positive to Legalization	Percent	No answer	
		Negative to Legalization		
Total Sample	62	26	10	2
Geographic Region				
Northeast	69	17	14	0
North Central	63	25	10	2
South	51	38	8	3
West	73	17	10	0
Income				
Less than \$5,000	43	38	16	3
\$5,000-\$10,000	58	33	6	3
\$10,000-\$15,000	63	23	11	3
\$15,000 and over	71	20	9	0
Education				
Less than high school	47	36	12	7
High school	65	24	10	1
Some college	70	21	9	0
College degree	77	13	10	0
Age				
18-24 years	72	21	6	1
25-44 years	68	22	9	1
45-64 years	58	25	14	3
65 and over	42	45	10	3
State where tracks are legal	68	19	13	0
State where tracks are illegal	50	50	0	0

which money was a significant factor in influencing participation were lotteries, sports betting, and numbers.

The most frequent reasons given for not betting on horses was lack of interest, which in most cases was expressed as “don’t know about it,” “don’t think about it,” and “have other things to do.” Money considerations ranked second. As was the case with all forms of gambling, most respondents attached relatively little importance to adverse moral or social consequences of betting on horses. Thirty-four percent of the respondents who bet at the track but not with illegal bookies expressed concern over the legal consequences of betting with bookies.

- Attitudes Toward Legalization (table 5-30). Attitudes toward legalization of horseracing generally reflect the status quo. Horseracing in 1974 was legal in 30 States and available to about 80 percent of the population. Sixty-eight percent of the people living in the horseracing States said legalization should continue; 13 percent were uncertain, and only 19 percent opposed legalization. By contrast, in the States without tracks, half of those interviewed favored legalization and half opposed it.

People with higher incomes and more education generally were more favorable to legalization, as were those in the lower age brackets. Most regional opposition to legalization came from the South.

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## STATE RACING COMMISSIONS

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Of the 32 States that conduct parimutuel wagering, 19 have licensed thoroughbred racing; 19 have harness racing; 4, quarter horse racing; 9, mixed racing;<sup>27</sup> 10, dogracing; and 3, jai alai. Each of the States has established some form of State racing commission to regulate those parimutuel activities. The commissions themselves vary in the way they are set up: Membership ranges from 1 person to 11. All members are appointed by the Governors but only 19 States require approval of the appointments by the State legislatures or council. About two-thirds of the commissioners are unsalaried, and most of the others receive only token remuneration. Terms of office, appointment of chairmen, and other administrative approaches also differ (see table 5-31).

Twenty-three racing States prohibit racing commissioners from holding any financial interest in racetracks within those States; nine States appear to have no restrictions in this regard. Only 8 of the 30 horseracing States prohibit racing commissioners from owning horses that race in the State. Similarly, most racing States do not prohibit racing commissioners from betting on races, although all of these same States do prohibit track officials and parimutuel employees from betting on races at which they are acting in an official capacity.

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### Regulatory Authority

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Every facet of racing, from parimutuels to security and from drug testing to public accommodations, comes within the commissioners’ purview. Racing in each State is governed by that State’s statutes, and each racing commission in each State promulgates its own racing rules and procedures. Nonetheless, there are many similar regulations among the jurisdictions, and reciprocity is the general rule. A penalty given a licensee of any State is usually honored by all other States.

**RACING DATES.** The allocation of racing dates is an important—and often controversial—power granted to

State racing commissions. All States limit the number of racing dates, and the pressures on racing commissioners in awarding those dates can be strong. Most commission regulations require that racing dates be allocated to “qualified” (licensed) racing associations capable of conducting races “in the public interest,” but commissioners still have considerable discretion.

**LICENSING.** The categories of racing participants required to be licensed vary from State to State. All States require that the racing associations that conduct the races undergo background checks, and some States require that each association be responsible for all personnel, including concessionaires and other contractors. Horse owners, trainers, jockeys, stewards, and backstretch personnel all must obtain licenses and pay the required fees. Bases for denying licenses include criminal records, false representation on license applications, failure to disclose true ownership of a horse, and inadequate training for a particular job, among others.

**RACING RULES.** Each commission establishes its own racing rules, which might cover such items as race entry conditions, eligibility of certain horses and dogs, post position, handicapping, racing weights, jockeys’ fees, and claiming race requirements. All types of parimutuel wagering, including exotic bets, are determined by the commissioners. In addition, the commissions set out wagering restrictions, which might cover some types of betting by jockeys or wagering by persons with criminal backgrounds or criminal intent.

**PROFESSIONAL STANDARDS.** The commissions, through their licensing and other procedures, set the professional standards for track personnel. Duties are established for all track officials including stewards, paddock judges, starters, timers, and veterinarians. The commissions also determine the grounds for suspension or revocation of licenses; these cover, among other things, violations of medication and horse testing regulations and general “good conduct” regulations, and criminal violations such as bribery and illegal wagering.

TABLE 5-31.—STATE RACING COMMISSIONS—JURISDICTION, COMPOSITION &amp; PROHIBITED ACTIVITIES

	Status of parimutuel wagering In State														Commissioners	Prohibited activities Wagering by licensees														
	Thoroughbred	Harness	Quarter Horse	Appaloosa	Arabian	Greyhound	Jai Alai	Number of Members	Governor Appointed	Senate Approved	House Approved	Governor's Council or Other Approved	Chairman Chosen by	Indefinite Tenure		Tenure of Office (Years)	Statutory Provision for Reappointment	Salary or Per Diem	Travel and Expenses	Statutory Provision for Bond	Pecuniary Interest in Tracks	Race Own Animals in State	Wager at Tracks in State	Owners on Animals not Their Own	Trainers on Animals not Their Own	Jockeys on Animals not Their Own	Jockeys Pooling Their Wagers	Track Owners	Racing Officials	Track Owners Racing Own Animals
ALA-Mobile C. <sup>1</sup>	—	—	—	—	—	X	—	3	NA	NA	NA	X	C	NA	3	X	X	X	X	—	no	no	—	—	—	NA	—	—	no	no
ARIZONA	X	X	O	—	—	X	—	5	X	X	—	—	—	NA	6	—	X	X	X	X	no	no	—	—	—	no	no	—	no	no
ARKANSAS	X	X	X	O	—	X	—	3	X	X	—	—	—	NA	5	X	X	X	X	—	no	no	—	—	—	no	no	—	no	no
CALIFORNIA	X	X	X	X	X	X	—	3	X	—	—	—	—	NA	4	X	no	X	—	—	no	no	X	no	no	no	no	—	no	no
COLORADO	X	X	X	X	O	X	—	3	X	—	—	—	—	NA	6	—	no	X	—	—	no	no	—	no	no	no	no	—	no	no
CONNECTICUT-CSR	O	O	—	—	—	X	X	9	5	2	2	—	—	NA	6	—	X	X	X	X	no	no	no	no	no	no	X	—	no	no
DEL-Thoroughbred	X	—	—	—	—	—	—	4	X	—	—	—	—	NA	6	X	no	X	X	—	no	no	no	no	no	no	—	no	no	
DEL-Harness <sup>2</sup>	—	X	—	—	—	—	—	3	X	—	—	—	—	NA	6	X	no	X	X	—	no	no	no	no	no	no	—	no	no	
FLORIDA-DPMW <sup>3</sup>	X	X	X	X	O	X	X	1	NA	NA	NA	X	NA	X	NA	NA	—	—	—	—	no	no	no	no	no	no	—	no	no	
IDAHO	X	—	X	X	—	—	—	3	X	X	—	—	—	NA	6	—	X	X	—	—	no	no	no	no	no	no	—	no	no	
ILLINOIS	X	X	O	X	—	—	—	7	X	X	—	—	—	C	NA	6	—	no	X	X	no	no	no	no	no	no	—	no	no	
KY-Thoroughbred	X	—	—	—	—	—	—	5	X	—	—	—	—	C	NA	4	X	no	X	—	no	no	no	no	no	no	—	no	no	
KY-Harness	—	X	—	—	—	—	—	5	X	—	—	—	—	C	NA	4	—	—	—	—	X	X	—	no	no	no	—	no	no	
KY-QH & Appa.	—	—	O	O	—	—	—	5	X	—	—	—	—	C	NA	4	—	—	X	—	—	—	no	no	no	no	—	no	no	
LOUISIANA	X	—	X	O	—	—	—	9	X	—	—	—	—	C	X	NA	—	X	X	X	no	no	—	no	no	no	—	no	no	
ME-Thoroughbred	O	—	—	—	—	—	—	3	X	—	—	—	X	C	NA	3	—	—	—	—	no	no	—	—	—	no	no	—	no	no
ME-Harness <sup>2</sup>	—	X	—	—	—	—	—	3	X	—	—	—	—	C	NA	3	—	X	X	—	no	no	—	—	—	no	no	—	no	no
MARYLAND <sup>4</sup>	X	X	O	—	—	—	—	5	X	—	—	—	X	C	NA	5	—	X	X	X	no	no	—	—	—	no	no	—	no	no
MASSACHUSETTS <sup>5</sup>	X	X	—	O	—	X	—	3	X	—	—	—	—	C	NA	8,3	—	X	X	—	—	—	—	—	no	no	—	no	no	
MICHIGAN	X	X	—	—	—	—	—	3	X	—	—	—	—	C	X	NA	—	X	X	X	—	—	—	—	no	no	—	no	no	
MONTANA	X	—	X	X	—	—	—	5	X	X	—	—	—	C	NA	3	—	X	X	—	X	X	—	—	no	no	—	no	no	
NEBRASKA	X	O	X	X	O	O	X	3	X	—	—	—	—	C	NA	3	—	no	X	X	—	X	—	—	no	no	—	X	—	
NEVADA <sup>6</sup>	X	—	X	X	—	O	X	5	X	—	—	—	—	C	NA	4	X	X	X	X	X	X	—	—	no	no	—	X	—	
N.H.—Horse	X	X	—	—	—	—	—	3	X	—	—	—	X	C	NA	3	—	X	X	—	X	—	—	—	no	no	—	X	—	
N.H.—Dog	—	—	—	—	—	X	—	3	X	—	—	—	X	C	NA	3	—	X	X	—	X	—	—	—	NA	—	—	X	—	
NEW JERSEY	X	X	—	—	—	—	—	4	X	X	—	—	—	C	NA	6	X	no	X	X	—	—	—	—	no	—	—	X	—	
NEW MEXICO <sup>7</sup>	X	—	X	X	—	—	—	5	X	X	—	—	—	C	NA	6	—	—	X	—	X	—	—	—	no	no	—	X	—	
N.Y.—Rac & Wag	X	X	O	—	—	—	—	3	X	X	—	—	—	C	NA	6	—	X	X	—	X	X	X	—	not applicable	—	—	—	—	
N.Y.—Thoroughbred	X	—	—	—	—	—	—	3	X	X	—	—	—	C	NA	6	—	X	X	—	X	X	—	—	no	no	—	X	—	
N.Y.—Harness <sup>8</sup>	—	X	—	—	—	—	—	3	X	X	—	—	—	C	NA	6	—	X	X	—	X	X	X	X	no	no	—	X	X	
N.Y.—Q Horse	—	—	O	—	—	—	—	3	X	X	—	—	—	C	NA	6	—	X	X	—	X	X	—	X	no	no	—	X	—	
OHIO <sup>9</sup>	X	X	X	X	O	X	—	5	X	X	—	—	—	C	NA	4	X	X	X	X	X	X	X	—	no	no	—	X	X	
OREGON	X	O	X	X	O	—	—	5	X	X	—	—	—	C	NA	4	—	X	X	X	X	X	X	—	no	no	—	X	—	
PA.—Thoroughbred	X	—	—	—	—	—	—	3	X	X	—	—	—	C	NA	3	—	no	X	—	X	X	—	—	no	no	—	X	—	
PA.—Harness	—	X	—	—	—	—	—	3	X	X	—	—	—	C	NA	3	—	no	X	—	X	X	X	X	no	no	—	X	—	
RHODE ISLAND	X	O	—	—	—	—	O	3	X	—	—	—	—	C	NA	6	—	X	—	—	—	—	—	—	no	no	—	X	—	
SOUTH DAKOTA	X	—	X	O	—	X	—	5	X	—	—	—	—	C	NA	5	—	X	X	—	X	—	—	—	no	no	—	X	—	
VERMONT <sup>10</sup>	X	X	—	—	O	—	—	3	X	X	—	—	—	C	NA	6	—	X	X	—	X	X	X	—	no	no	—	X	—	
WASHINGTON	X	O	X	X	—	—	—	3	X	X	—	—	—	C	NA	6	X	X	X	X	X	—	—	—	no	no	—	X	—	
WEST VIRGINIA	X	X	—	—	—	—	—	3	X	X	—	—	—	C	NA	4	X	X	X	—	X	—	—	—	no	no	—	X	X	
WYOMING	X	—	X	X	—	—	—	5	X	X	—	—	—	C	NA	4	—	X	X	—	X	X	X	—	no	no	—	X	—	

## Legend

X = Yes, also means form of racing legal and conducted in State  
 O = Form of racing legal but not conducted in State  
 G = Chairman appointed by Governor

C = Chairman elected by members of Commission  
 NA = Not applicable  
 no = Prohibited activity  
 — = Subject not covered in law or regulations

## Explanations and Footnotes

The sources for table 5-31 included the Racing Law from each of the 32 State statutes and the Rules and Regulations promulgated by each of the respective Racing Commissions. Information contained in table 5-31 concerning the Racing Commissioners was generally obtained through the Racing Laws, and the section dealing with prohibited activities of licensees was compiled from regulations contained in the individual State Racing Commission sets of Rules and Regulations. Although the Gambling Commission was able to obtain almost all of the individual State Rules and Regulations, several State Racing Commission Rules and Regulations were not made available for use by the Commission, thereby causing a number of blank sections in the portion of table 5-31 concerning licensees. Any omissions and inaccuracies will be corrected if brought to the attention of the Gambling Commission. As the actual practice of a State Racing Commission may differ somewhat or may be more inclusive than can be determined by reading an individual State's statutes and regulations, the Gambling Commission will of course revise table 5-31 to conform with the actual practice and procedures of the individual State Racing Commissions if such practices have in any manner been misinterpreted or misquoted by the

Commission. For the purposes of this Table, the term "Racing Officials" means those Stewards, Judges, Starters, parimutuel department employees, paddock judges, placing judges, Racing Secretaries, etc., licensed by the individual State Racing Commissions and employed by the individual Racing Associations to supervise and regulate racing programs. Those persons generally included in the term "backstretch personnel" are not meant to be included under the title "Racing Officials."

1. ALA.—Mobile C.—First Commissioner appointed by two-thirds vote of members elected to the Legislative Delegation of the County with consent of the County Governing Board. Second Commissioner appointed by Mobile County Foundation for Public Higher Education if such foundation shall have been created heretofore in such county and, if there is no such foundation, then such member shall be appointed in same manner as Third Commissioner. Third Commissioner appointed by a majority vote of the municipalities of Mobile County, each municipality being entitled to one vote, and a majority of the Commissions or Councils of said municipality determining how said vote is cast. Each appointment heretofore described shall be subject to the approval of a majority vote of the Board of County Commissioners before said appointment takes effect.

**SECURITY.** The commissions try to insure track security through controlled entry to certain areas, identification requirements, special exemptions, and fire and safety regulations.

**TAXATION.** Although a State's takeout from a racing meet is determined by the State legislature, the State racing commission often acts as the tax collector for the State, and as such may be required to handle the bookkeeping and other duties associated with tax collection.

## RACING INDUSTRY ORGANIZATIONS

Although it is the State racing commissions whose rulings have the force of law, the racing industry supports a variety of self-regulatory and protective organizations. These organizations, which represent individual segments of the industry, are understandably protective of their own interests. Whereas discord and antagonism were once the rule among the various independent groups, the growing realization that the racing industry has been hurt by its disunity has prompted its leaders to seek ways of improving cooperation. At the same time, those within the racing industry unanimously reject the notion that unity should be imposed upon them by the Federal Government, fearing that participation on the Federal level would be accompanied by new Federal taxation. Nor are those States that permit parimutuel wagering willing to give up their regulatory authority in the interest of uniformity within the industry.

It may well be true that total consolidation of interests and authority within the parimutuel industry would be less helpful than the current situation. The character of racing differs substantially from State to State, and the problems of one segment of the industry, although affecting its other components, may require specialized treatment that a superagency could not provide. Today, while remaining

independent and sometimes overprotective of their own interests, the racing organizations as a group constitute a significant body of expertise for the industry. Together with the State racing commissions, they provide a system of checks and balances that is capable ultimately of devising equitable solutions to the industry's various problems.

The National Association of State Racing Commissioners (NASRC) is composed of legally constituted State or governmental boards or commissions on racing. It promotes the adoption of uniform procedures and reciprocity of enforcement, regulations, and penalties among the States allowing parimutuel racing. One of the association's most significant contributions to the industry was the creation of a centralized computer information network called NASRIS (National Association of State Racing Information Service). To aid in its own research, the National Gambling Commission supplemented the NASRC funding to complete and expand the system. Although the information in NASRIS is available to all State racing commissions, only 15 support it financially. The system's operation is discussed later in this section.

The American Horse Council (AHC) was established in 1969 to represent the horse industry before the Federal

### Explanations and Footnotes continued

2. DEL.-Harness—A copy of this Commission's Rules and Regulations was not made available for use by the Gambling Commission. The following State Racing Commissions also did not forward copies of their regulations to the Gambling Commission: Maine Racing Commission, Maine Harness Racing Commission, Nevada Racing Commission, New York Racing and Wagering Board (New York Quarter Horse Racing Commission), and the Rhode Island Racing and Athletics Commission. The Puerto Rico Racing Sport Administration has not yet been contacted by the Gambling Commission.

3. FLORIDA-DPMW—The 1971 Florida legislature transferred the Florida State Racing Commission to the Department of Business Regulation and assigned the Racing Commission's functions to the Division of Parimutuel Wagering of the Department of Business Regulation. The Division is supervised overall by a Board of Business Regulation which also supervises the Division of Beverage, the Division of Hotels and Restaurants, and the Division of General Regulation. The Board of Business Regulation is the only entity that can fix dates for racing, and the Division recommends such dates when requested. The Director of the Division of Parimutuel Wagering is chosen by the Executive Director of the Department of Business Regulation who is appointed by the Board of Business Regulation. Members of the Board of Business Regulation are appointed by the Governor.

4. MARYLAND—Racing Commission nominees require the consent of the Secretary of Licensing and Regulation as well as the Governor to be appointed members of the Maryland Racing Commission. Similarly, the Chairman of the Commission is appointed by the Governor with the approval of the Secretary of Licensing and Regulation.

5. MASSACHUSETTS—The State Racing Commissioner is appointed for a term of 8 years. The two Deputy Commissioners are appointed for terms of 3 years each.

6. NEVADA—(A) Jai alai is conducted in the State of Nevada, but is under the supervision of the Nevada Gaming Commission.

(B) Members of the Commission may not enter their own greyhounds in races conducted in Nevada, but there appears to be no restriction concerning the entrance of a Commissioner-owned horse in races conducted in the State.

7. NEW MEXICO—Rules and Regulations 9.11: Jockeys, Jockey Attendants, or other Jockey Room employees while on duty at a race track licensed by

the Commission shall not directly or indirectly wager on the results of a race, or have any ownership or financial interest in any horse registered to race at the Meeting.

8. N.Y.-Harness—(A) No owner, driver, employee, etc., may participate in exacta, quinella, superfecta, or triple wagering on a race in which a horse in which such person may have an interest is starting.

(B) No officer, director, executive, or spouse thereof, of a track may enter a horse in which he has any beneficial interest in any overnight event at said track.

9. OHIO—The Gambling Commission construes the meaning of the following clause contained in the Ohio Racing Law to mean that no Commissioner may enter horses, wager at tracks located in Ohio, or have any interest whatsoever in Racing Associations licensed by the State:

(A) Title 37: Health-Safety-Morals: Chapter 3769 §3769.02

"... No person shall be appointed to the Commission nor be an employee thereof nor officiate at parimutuel meetings conducted in this State who is licensed or regulated, directly or indirectly by this Commission other than for the position to which he is appointed nor shall he have any legal, or beneficial interest, direct or indirect, pecuniary or otherwise, in any firm, association, or corporation licensed or regulated or which participates in parimutuel meetings in any manner, nor shall he participate in parimutuel meetings in any manner other than in his official capacity."

(B) No Association member or employee may enter horses in which he has a direct or indirect interest at any meeting where racing is conducted under his permit, except in stakes and futurities.

10. VERMONT—The Gambling Commission construes the meaning of the following clause contained in the Vermont Racing Law to mean that no Commissioner may enter horses in races conducted in Vermont, wager at tracks located in Vermont, or have any interest whatsoever in Racing Associations licensed in that State:

Chapter 13 Horse Racing: §602 (c) "... No member of the Commission shall have any pecuniary interest in any racing or in the sale of parimutuel pools, ..."

Government. At that time, the AHC attempted to protect the industry from what it felt were oppressive Federal tax proposals then under consideration in Congress. Taxation continues to be a major concern of the organization, as does State and Federal regulation of the industry. In the short time since its creation the AHC has become the greatest aggregate representative of the industry. The AHC is potentially the most influential voice representing the entire horse industry's concerns before Congress.

The prestigious Jockey Club was formed in 1894 for the purpose of organizing and regulating thoroughbred racing. Over the years the club developed a number of procedures that are now standard in racing. Its stud book, maintained since the club's inception, provides a record of all American thoroughbreds; the starting gate, originally suggested by the club, today is used throughout the world; the photo-finish camera was developed through the efforts and funds of the club; and drug testing, horse identification procedures, and film patrol movies are among its other innovations. The Jockey Club also provides a forum for constructive debate about the industry's problems. Each year the club sponsors round table discussions in Saratoga, New York, and publishes a summary of all the issues discussed. The club also funds various economic studies that benefit racing's interests.

An influential organization representing track owners is the Thoroughbred Racing Association (TRA), established in 1942 to "promote the best interests of thoroughbred racing." TRA developed standards for its member tracks designed to keep the industry and the sport highly competitive, free of corruption, and entertaining for the spectator. TRA's 56 member tracks spend approximately \$13 million annually on track security.

The Thoroughbred Racing Protective Bureau (TRPB) is the investigative arm of the TRA. It was established in 1946 to enforce compliance with TRA standards. Its investigators are financed by TRA member tracks at an annual budget of more than \$1 million. The results of TRPB inquiries are given to authorized TRA officials and State racing commissions for either corrective or disciplinary action. The security standards adopted by the TRPB are stringent and comprehensive, and, if applied uniformly to all parimutuel wagering, would result in substantial improvements in track security throughout the industry.

The U.S. Trotting Association (USTA) was formed in 1938 to bring order to a sport torn by dissension. The USTA provides a wide variety of services to its nearly 40,000 members—horse owners, drivers, caretakers, breeders, and track personnel. The association's rules and regulations have been adopted or emulated by harness racing commissions in almost every State where this type of racing is offered. The USTA also serves as a clearinghouse providing registration, recordkeeping, and other information to tracks and various racing commissions. The association has supported research projects that have resulted in such innovations as prerace testing and improved control of equine diseases.

Harness Tracks of America (HTA), headquartered in

Chicago, represents 50 harness tracks in this country and Canada. It is dedicated to the maintenance, promotion, and advancement of harness racing. Members of HTA underwrote the independent Harness Track Security (HTS) in 1968. HTS provides security at 33 harness tracks. Its mission is to identify and ban persons and practices that may tarnish the sport. HTS personnel are assigned to investigate all rumors and allegations of wrongdoing and report their findings to individual State racing commissions, to the tracks, and to prosecutors when evidence of wrongdoing has been obtained. Harness Horsemen International (HHI), established in 1964, comprises 19 local organizations, 17 of which are in the United States; it speaks for these associations at national and international levels. It also provides an extensive insurance program for backstretch personnel as part of its effort to attract qualified employees.

The Thoroughbred Owners and Breeders Association (TOBA) is a relatively small organization formed in 1961 by a merger of earlier, similar organizations. Its purpose is to promote, protect, and improve thoroughbred breeding and racing. Its interests are aligned with the breeders and other persons whose primary income is generated by the commercial activities connected with thoroughbreds.

The Jockeys' Guild was organized in 1940 to protect the health, welfare, and legal interests of jockeys. In addition, the guild has promoted a number of features to insure the safety and integrity of jockeys, including closed starting gates, photo-finish cameras, and the film patrol. Another employee welfare group is the Horseman's Benevolent and Protective Association (HBPA). Founded in 1940, this organization's membership includes more than 40,000 thoroughbred owners and trainers in the United States, Canada, and Puerto Rico, as well as more than 100,000 employees of its members. The HBPA represents its members in dealing with racing associations with respect to purse contracts, improvement of backstretch facilities, and other matters of interest to horsemen. The HBPA distributes more than \$1 million annually to needy horsemen and their employees.

Quarter horse racing is increasing in popularity, particularly as the number of racing dates increases. The American Quarter Horse Association (AQHA), based in Amarillo, Texas, represents the breeders, owners, and trainers of quarter horses. Among its activities, AQHA records the pedigrees of quarter horses, publishes the stud book, and conducts promotional and educational programs on quarter horses. It also helps make and enforce rules for recognized quarter horse racing at many tracks throughout the country.

The American Paint Horse Association, the Appaloosa Horse Club, the Arabian Horse Racing Association, and the Arabian Horse Racing Registry of America are all small but growing associations that represent emerging horse breeds of increasing interest to the racing industry.

The National Greyhound Association was founded in 1906. Its membership consists of more than 3,000 greyhound owners and breeders. The NGA maintains a registry of all greyhound racing dogs. The association's extensive identification system, which includes ear tattoos,

is the basis for the rigid inspection and identification of greyhounds at the track. A newly formed greyhound organization is the United Greyhound Association, established in March 1976 to fill the void created when the National Greyhound Association withdrew from the political arena to resume its traditional role as the national greyhound registry.

The American Greyhound Track Operators Association (AGTOA) is composed of the owners and operators of all greyhound tracks in the United States. The AGTOA is

active in the areas of advertising, public relations, chemistry, and health research. The AGTOA currently is developing a computer information system which, when completed, will provide racing history and past performance records on all racing greyhounds. Through computers in Lexington, Kentucky, and with terminals at every track, the system will be able to provide instant access to past-performance information.

There is no national jai alai association. Jai alai, though legal in four States, is conducted in only three.

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## INDUSTRY PROBLEMS—HORSERACING

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Judged by outward appearances, the racing industry is economically sound and its future appears bright. Statistics compiled by the NASRC indicate that the number of racing dates, betting handle, per capita bets, and race track attendance are increasing each year. But these figures are deceptive. Horsemen, breeders, trainers, and track owners have found cause for alarm in the state of racing today. Most of their concerns are economic, and while there is general agreement in defining problems, there is little consensus regarding solutions. Because the various segments of the industry represent fragmented and often competing interests, changes proposed by one faction are likely to be accomplished at the expense of another. The three principal interest groups in racing are the State, the tracks, and the horsemen.

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### The State

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Many people within the racing industry consider the State to be their silent partner, taking a substantial portion of the proceeds and contributing little to the industry in return. The State plays an active role in racing through its regulatory powers, but its main interest in the industry is economic. Although taxes on parimutuel wagering constitute only a small percentage of the total budget of most States, the States would be extremely reluctant to relinquish this source of income, and in fact, are continually seeking ways to increase it. In the past 10 to 15 years, the average total parimutuel takeout has increased from an average of 12 percent to an average of 15 to 17 percent, and the State's share of the increase has been proportionately greater than that of the tracks and horsemen. Studies have shown that the size of the takeout directly influences race track attendance and thus the size of the handle. At the Aqueduct meeting in the fall of 1974, the total takeout was reduced from 17 to 14 percent for 23 days. While the lower takeout was in effect, average daily handle and attendance both increased approximately 16 percent. It is not known, however, whether the revenues gained through attendance and handle would in the long run make up for the revenue lost as a result of the lowered takeout, and most States appear unwilling to take the risk.

The States' constant desire for greater revenue from

parimutuel wagering has also been expressed through significant increases in the number of racing dates. With the addition of each new racing date, the State increases its parimutuel revenue with little or no additional expense to itself. That the State should be anxious to exploit this ready source of income is not difficult to understand. Politically, it is much more expedient (if not efficient) to increase parimutuel levies and racing dates than to raise taxes. From the State's point of view, gambling offers the public a relatively "painless" form of taxation. But the racing industry has become increasingly sensitive to the effects of State efforts to increase the parimutuel revenue base and the methods employed to accomplish this end.

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### The Tracks

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The steady increase in racing dates over the past 11 years has made racing more accessible to the public. Total attendance at horseraces increased 25 percent between 1965 and 1975, compared to an approximate 12 percent increase in the Nation's population during that period. The rate of attendance increase, however, has not kept pace with the rate of increase in racing dates. As stated earlier, average daily attendance per racing meet has actually decreased by 23 percent.

The number of small thoroughbred tracks<sup>28</sup> increased from 69 in 1960 to 84 in 1974. No new large thoroughbred tracks were added to the 9 already existing during that period,<sup>29</sup> but a huge multisports complex has recently opened in New Jersey that competes directly with New York's large Aqueduct and Belmont tracks as well as with the smaller thoroughbred and harness tracks nearby.

Although each State attempts to avoid overlapping racing schedules among nearby tracks, the proliferation of racing days in recent years has made heavy competition inevitable in some areas. In New York, for example, although there is no hourly overlap between the racing schedules of the various tracks, the tracks are nonetheless competing for a finite number of fans and racing dollars. The dilution of a finite racing market through the extension of the racing season appears to be one of the principal causes of declining track profitability in some areas of the country, although further research on this problem needs to be conducted before any firm conclusions are drawn.



In 1973, the New York Racing Association tracks experienced a \$1.8 million operating loss, despite an increase that year in the tracks' share of the takeout. NYRA showed a small profit in 1974 but in 1975 it lost more than \$3 million, due primarily to construction and plant improvement expenditures and debts incurred in previous years.

Noncooperation among States in the licensing of racetracks and the allocation of racing dates can also cause economic hardship for the tracks, since racing markets do not confine themselves to State boundary lines. Keystone Racetrack in Pennsylvania is located just 20 miles away from the Delaware Park track in Delaware. The overlapping schedules of these tracks work to the detriment of both. Cooperation among States on a regional basis—with regard to both the construction of new tracks and the allocation of racing days—is needed in order to avoid destructive interstate competition. Pennsylvania and New Jersey racing authorities have begun coordinating their racing schedules for tracks near these States' contiguous borders.

The quality of track facilities is also believed to affect attendance directly. When tracks operate profitably, they are able to reinvest a portion of their income for track maintenance and facilities improvement. But as track profits decline, there is less money available for this purpose. Experience has shown that as track facilities become shabby, attendance declines; the betting handle—along with income from parking and admission—declines, leaving even less money for track maintenance and further discouraging attendance.

Declining daily attendance may be on a collision course with rising track operating costs. As each day's operation becomes less profitable, the future of many tracks becomes more uncertain. For each day that racing is conducted, the track has specific operating expenses. It has a large payroll of waiters, porters, parking attendants, bartenders, mutuel clerks, racing officials, traffic control personnel, ushers, and admissions personnel. The tracks also must meet rising backstretch costs, among them outlays for housing, water and electricity, food, and in some cases education, recreation, and even religious services. The track operation only remains profitable as long as its income from admission, concessions, and betting exceeds its daily operating costs. Obviously, as attendance decreases, so do revenues from these three sources.

In 1974, the Jockey Club commissioned a study<sup>30</sup> to determine the future of thoroughbred racing in America. Using a computer model, the study examined three basic areas: the industry's most critical problems, a 10-year forecast based on a continuation of current trends, and an exploration of possible changes that could benefit the industry. Although the study applied only to thoroughbred racing, many of the problems identified apply as well to other forms of horseracing.

With respect to thoroughbred racetracks, the study forecast a rather bleak future, assuming the continuation of current trends. It predicted that large tracks, which had experienced respectable profits throughout the 1960's and early 1970's, would hover at or slightly below the break-

even line from the late 1970's through 1984, during which time two large tracks would close. Small tracks, which had been more profitable than large tracks during the 1960's, began to lose money rapidly in the 1970's and would continue to do so, the study predicted, until around 1980, when the closing of many small tracks would begin to benefit those that remained.

The computer study examined 13 policy changes and the effect of each on various segments of the industry. Most of the changes involved increases, decreases, or reapportionment of the takeout; others dealt with further increases in racing days, changes in Federal tax laws, and the expansion of off-track betting. Among the policy changes recommended by the study that would benefit racetracks, but not necessarily other segments of the industry, were the following:

- Increasing the track's share of the takeout and using the increase for facilities maintenance and improvement.
- Reducing the State's takeout by 1 percent.
- Introducing intrastate OTB in areas where its competition with tracks is minimal and using the same takeout split for both on-track and off-track betting.

None of these solutions was offered as a panacea for track owners; rather, they were policy changes that the study predicted would result in fewer track closings than the number that has been forecast on the basis of a continuation of current trends.

Among the policy changes that would be most harmful to the tracks were: increasing the State's or the horsemen's takeout; further expanding racing dates; and establishing OTB in direct competition with the tracks. Unfortunately, so little of the workings of the study model have been made public that only limited confidence can be placed in its predictions.<sup>31</sup>

Because many State racing commissions have inadequate auditing and reporting requirements for racetracks, it is sometimes difficult to determine actual track profitability. This problem was underscored in a recent report issued by the New York State Commission on Investigation.<sup>32</sup>

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## The Horsemen

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Of the three principal recipients of revenue from the racing industry—the State, tracks, and horsemen—the problems of horse owners and breeders appear to be the most severe. The average horse owner or breeder is accustomed to losing money. But there are a number of intangible rewards in the breeding, training, and racing of horses that for many horsemen outweigh economic consideration. In the past few years, rapidly rising costs and attempts by the Federal Government to redefine the tax status of horsemen have caused even the most tenacious owners and breeders to worry.

The only source of income for horse owners is the purses paid to winning horses. Since 1970, the cost of owning and breeding racehorses has increased much more rapidly than the fairly substantial increase in purse size. As shown



in table 5-32, horsemen's purses increased 245 percent from 1965 to 1975; taking into account the effects of inflation, total purses increased 44 percent. But as table 5-33 shows, these figures can be deceptive. Thoroughbred purses increased 116 percent from 1965 to 1975, or 27 percent after accounting for inflation. But because the number of horses in training also increased substantially during this period, real earnings per horse actually decreased by 19 percent when adjustments for inflation were made.

Out of each purse he wins, the horse owner must pay the jockey and the trainer. The trainer in turn pays the salaries of the various backstretch personnel, plus transportation, blacksmith, veterinarian, and other expenses. In 1971, maintenance expenses for New York horsemen exceeded net purses by approximately \$4.8 million; in 1974, expenses exceeded purses by \$8.2 million. The same year, the average after-tax loss per thoroughbred owner, nationwide, was about \$6,000.

TABLE 5-32.—HORSEMEN'S PURSES, 1965-1975

Year	Current dollars	1967 dollars
1965	\$169,971,331	\$179,863,633
1966	176,699,192	181,789,292
1967	174,176,696	174,176,696
1968	206,275,040	197,960,691
1969	232,395,558	211,653,513
1970	254,848,551	219,130,310
1971	267,740,957	220,726,262
1972	281,551,208	224,701,682
1973	341,603,461	256,844,707
1974	378,851,952	256,500,983
1975	417,326,511	259,209,013
Percent change 1965-1975		
	+245	+44

TABLE 5-33.—THOROUGHBRED PURSES, 1965-1975

Year	Thoroughbreds in training*	Thoroughbred purses		Annual purse per horse	
		Current dollars	1967 dollars	Current dollars	1967 dollars
1965	35,000	\$109,798,526	\$116,188,359	\$3,137	\$3,195
1966	37,000	115,433,441	118,758,230	3,119	3,208
1967	39,000	122,874,514	122,874,514	3,150	3,150
1968	41,000	132,015,928	126,934,134	3,219	3,095
1969	44,000	149,011,014	136,706,422	3,386	3,106
1970	47,000	162,895,833	140,426,724	3,465	2,987
1971	49,000	166,199,701	137,354,545	3,391	2,802
1972	52,000	173,070,030	138,456,000	3,328	2,662
1973	54,000	216,740,781	162,962,406	4,013	3,071
1974	55,000	223,478,146	152,025,850	4,063	2,763
1975	57,000	237,480,527	147,503,105	4,166	2,587
Percent change 1965-1975					
	+54	+116	+27	+33	-19

Year	Thoroughbred owners*	Annual earnings per owner	
		Current dollars	1967 dollars
1965	18,000	\$6,099	\$6,464
1966	19,000	6,075	6,250
1967	20,000	6,143	6,143
1968	21,000	6,286	6,044
1969	22,500	6,623	6,076
1970	24,000	6,787	5,851
1971	24,500	6,784	5,607
1972	25,000	6,923	5,538
1973	26,000	8,336	6,268
1974	27,500	8,126	5,528
1975	29,000	8,188	5,086
Percent change 1965-1975			
	+61	+34	-21

\*Approximate numbers.

A recent change in the tax status of horse owners has added to their plight. Prior to 1969, horsemen were permitted to deduct their racing losses from income they made through other businesses, on the theory that they were providing a valuable agricultural service by working to improve the breed. In 1969, however, the tax law was amended to disallow deductions from activities not engaged in for profit. Currently, in order to continue deducting racing losses, horse owners must turn a profit at least 2 years out of every 7. With costs rising rapidly, few horsemen today can expect to do that well. As horsemen experience increasingly heavy losses, many may be forced out of the racing business.

The fate of horse breeders and trainers is linked to that of the owners. If the number of owners declines so could the number of horses racing, and hence the demand for breeders and trainers, farm and backstretch workers.

As a result of the rapid increase in racing dates, there are sometimes too few quality horses to fill thoroughbred racing programs at the larger tracks. Smaller tracks also are affected by the shortage. Since the large tracks can accommodate larger crowds they can offer higher purses. The higher purses in turn attract the best horses, leaving the smaller tracks to settle for the slowest horses. Research has shown that attendance decreases when the quality of horses declines and when there are too few horses in a race (short fields), but comprehensive studies in this area have yet to be conducted. Horse owners currently attempt to meet the tracks' demands for horses by racing their horses at a younger age and more often than they otherwise might, practices which increase the horse's risk of injury and shorten its racing career.

Owners of quarter horses believe they have a solution to the problem—mixed thoroughbred and quarter horse racing programs. Thoroughbred owners strongly oppose the concept of mixed programs, believing that such programs reduce the handle on thoroughbred races. Quarter horse owners disagree.

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## Law Enforcement

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Whenever large sums of money change hands quickly, as in parimutuel wagering, certain law enforcement problems arise. The primary problems of horseracing involve (1) attempts to influence the outcome of races illegally; (2) parimutuel fraud; (3) hidden ownership of racetracks; and (4) political impropriety in matters affecting racing, such as in the assignment of racing dates or the granting of licenses. A brief discussion of each of these problems follows:

**RACE FIXING.** Parimutuel wagering offers the successful bettor a legal method of "earning" a great deal of money in a short time with a minimum of effort. As such, it may be particularly attractive to those who seek to eliminate the element of chance in wagering by prearranging the outcome of a race—in short, to fix a race.

The quality of track security varies considerably from track to track and from State to State. There is general agreement among those within the industry that there is

room for improvement in this area. Some critics of current security arrangements believe that potential for conflict of interest exists in the use of TRPB or HTS investigators, since these personnel are hired and paid for by the members of the racing industry itself. The concept of self-policing by a sports industry is not unique to horseracing, however. The National Football League, for example, employs an extensive internal security force.

In May 1972, a congressional committee conducted a series of hearings on criminal activity in sports. In its various hearings around the country, the National Gambling Commission also heard testimony on the subject. Based on information gathered by the Commission both through its hearings and outside research, three general methods of race-fixing have been identified. The first two methods—bribery and "ringers"—occur infrequently today, and it appears that current State and Federal laws are adequate to deal with such cases. The use of the third method—illegal medication—also is becoming increasingly difficult to engineer due to improved testing procedures. Following is a brief description of each method.

1. Bribery. Attempts may be made to bribe either a single jockey or a group of jockeys to fix a race. (In Illinois a few years ago, a jockey was induced to use an electrical prod to stimulate his horse's performance.) Bribery is an expensive and risky means of fixing a race, since usually more than one individual must participate to insure a particular outcome.

2. Ringers. The use of ringers, or "straws"—the substitution of a faster horse for a slower one of similar appearance—was once fairly common practice and one not too difficult to accomplish. The institution of the lip tattoo by the TRPB, however, makes it much more difficult to substitute horses. Since many horseraces and dograces are "classified" events—i.e., animals of similar abilities compete against one another—the substitution of a fast horse in a field of slower horses assures the fixer of an almost foolproof bet, providing his scheme escapes detection. Today, however, identification of each animal is carefully verified by track stewards and management personnel.

3. Illegal medication. With the use of ringers made extremely difficult, if not impossible, race-fixers turned to other methods, one of which was the use of prohibited medications as a means of predetermining the outcome of a race. In most States, testing for the presence of illegal medication is performed after each race, always on the winning horse, and in some cases on losing horses selected at random. Tightened backstretch security and improved testing techniques have reduced but not eliminated the incidence of illegal drug use. Compounding the problem is the ever-present danger that new drugs may be developed that cannot be detected through current testing procedures. At present, testing for illegal medication is a significant expense for the racetracks or the States (procedures vary). The U.S. Food and Drug Administration is responsible for testing the effects of new drugs before they are marketed, but the FDA does not require the drug manufacturer to provide information on how its product

may be detected through testing, nor does it perform this service itself, thereby leaving to the consumer—in some cases the State, in others private racing associations—the often considerable expense of developing testing procedures. One of the more controversial issues surrounding the use of medication regards prerace testing. In theory, prerace testing would have the advantage of enabling the disqualification of illegally drugged horses before the race, thus avoiding the confusion and anger that can erupt in the grandstands when a horse is disqualified after a race. But horse owners object to the practice because they believe it would adversely affect the performance of their horses. The high cost of using mobile labs at the track is another factor that has prevented the institution of prerace testing at most tracks. Prerace testing is currently in effect, however, at New York and Ohio harness tracks.

Many horse owners, racetrack owners, and racing officials believe that exotic wagering fosters race-fixing attempts. If the mere existence of wagering is considered an inducement to race-fixers, then exotic wagering multiplies that inducement many times over by substantially increasing the payoff. The majority of recent race-fixing attempts have involved exotic wagering events.

One way that States work to protect the integrity of racing involves the use of a computerized data bank containing names of all individuals in the horseracing and dogracing industries against whom official rulings have been made. The NASRIS file also contains the names of all

individuals licensed by State racing commissions. Theoretically, by a system of reciprocity, States may refuse to license individuals who have had rulings against them in other States. Similarly, if particular horse owners, trainers, jockeys, or racing officials are barred from the tracks in one State, they are to be barred by tracks elsewhere.

**PARIMUTUEL FRAUD.** The use of sophisticated electronic computers in parimutuel wagering has made it difficult to skim large amounts of money from the parimutuel handle or to operate ticket windows illegally. All racing States require parimutuel clerks to be licensed, but few States conduct careful investigations into the background of clerks or other track employees who handle large sums of money.

**HIDDEN OWNERSHIP.** The question of hidden ownership of racetracks is currently one of the most sensitive and controversial issues facing the racing industry. Most States do not currently require applicants for racetrack licenses to disclose the sources of all income that will be used to finance their operations. The absence of strict disclosure procedures creates the potential for some racetracks to be owned either by persons who would otherwise be disqualified from licensing because of criminal association or because of their position in State government. The issue facing the racing States today is: Should full disclosure of track ownership be required by law, and if so, should licenses be denied or revoked if it is determined that the applicant or licensee is economically controlled by other individuals?

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## INDUSTRY PROBLEMS—DOGRACING

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The dogracing industry is flourishing. Attendance and handle are increasing, and most tracks are operating profitably. In some States, the takeout rate is slightly lower for dogracing than for horseracing, and that gives dogracing a small competitive advantage.

But the dogracing industry is not entirely without problems. While tracks remain profitable, rapidly rising maintenance costs have some owners worried. Energy costs have soared, causing a considerable financial burden to a sport that is conducted mostly at night. In addition, dog owners are finding it increasingly expensive to care for and feed their animals.

But the most serious problem within the dogracing industry is the conflict that has developed between track owners and independent kennel operators (dog owners and breeders). In 1975, dog owners protesting what they perceived as an inadequate division of the takeout between tracks and themselves, attempted to boycott tracks by refusing to supply them with dogs. Underlying the problem, they felt, was the booking system used throughout the dogracing industry. Unlike the horse owner, who can race his animal at almost any track, the owner of greyhounds must negotiate individually with each track a contract stipulating the percentage of the takeout he will receive and the number of dogs he will supply throughout the racing season. If the dog owner

cannot accept the terms offered by the track, he can attempt to reach an agreement with another track. Dog owners believe that they have little or no bargaining power, and they allege that some tracks conspire to keep the purse structure low. This problem is compounded, they believe, by the fact that in some areas a single individual may own or control several tracks, thereby further reducing dog owners' market alternatives. Seven people control or own more than half of the 42 dog tracks in this country. Dog owners believe that these monopolies give track owners undue influence in the judicial and legislative branches of individual State governments.

As a result of the 1975 strikes by dog owners, some tracks were forced to close temporarily. In Florida, a number of strikers were jailed for breach of contract. There and elsewhere, track operators retaliated by acquiring their own kennels and racing their own dogs. The effect of this action was to intensify the antagonism between independent kennel operators and tracks. Dog owners now believe they face a problem even more serious than the purse structure issue. They believe that if tracks are not prevented from racing their own dogs, the majority of independent dog owners will be driven out of business, the quality of racing will deteriorate and thus decline in popularity, and perhaps most important, the integrity of the races themselves will be jeopardized.<sup>33</sup>

On the other side, track operators deny that purse structures in racing are too low or that there has been any collusion among tracks to establish fixed purse rates. Track operators believe that if purses were raised, they would not have enough money to maintain and improve their facilities, which in turn would discourage attendance. They claim that the strikes by dog owners in 1975 forced them to acquire their own kennels in order to stay in business. Finally, they do not believe that the practice of racing house dogs constitutes a conflict of interest since many precautions are taken to keep races honest.<sup>34</sup>

The battle lines between dog owners and track operators have expanded to the courts and legislatures. Apart from antitrust action pending in Arizona, most of the legal maneuvering is taking place in Florida, the largest greyhound racing State. Florida dog owners are attempting to secure passage of three bills—one that would provide for a 3 percent minimum purse structure, one that would prohibit track owners from having any financial or other interest in racing dogs or kennels, and a third that would establish minimum standards for kennels. Two Florida track operators have brought suit against the striking dog

owners, who, in turn have filed a counterclaim against seven Florida tracks for conspiring to fix purses and conditions of contracts and for blacklisting kennel operators. In an effort to strengthen their bargaining power with the tracks, greyhound owners and breeders formed a union under the auspices of the AFL-CIO.

Arguments as to the merits of each case aside, the intramural warfare within greyhound racing has the potential to damage the industry severely. There already is evidence that the current feud between dog owners and tracks has made the betting public wary. Two of Florida's largest tracks have experienced declining handles in the past year. Further, some observers believe that heavy bettors are reluctant to risk sizable amounts of money on the track-owned dogs that were brought in during and after the strikes. At least seven State legislatures—including New York and California—are currently considering bills to legalize greyhound racing. Undoubtedly, these States will be monitoring the progress of the various ongoing legislative and judicial squabbles and measuring their effects on the wagering public.

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## COMPETITION

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The rapid expansion of legalized gambling has been spurred by revenue-hungry State legislatures and pressure from the various legal industry lobbies. What everyone fears, however, is that competition among rival gambling factions may one day strangle all but a few of the liveliest combatants, as a gambling-saturated public turns to recreational pursuits that make fewer demands on their pocketbooks and emotions.

In horseracing, many track owners and horsemen fear that the widespread legalization of certain types of gambling—principally casinos, greyhound racing, and sports betting—would signal the eventual destruction of their sport. There is some evidence that their concern may be justified. In Nevada—the only State with both legal casinos and sports betting—horseracing is practically extinct.<sup>35</sup> The number of racing days there decreased from

about 58 in 1965 to only 8 in 1974. For the immediate future, it does not appear that many States will legalize casinos, but greyhound racing and sports betting may be another matter. As stated above, bills to legalize greyhound racing have been introduced in a number of States. In addition, the New York Off-Track Betting Corporation is seeking permission to begin accepting sports card wagers—a move that has already aroused opposition from the horseracing industry. Since New York is the major horseracing State, anything that harms racing there is likely to affect the industry as a whole. Greyhound tracks also are feeling the effects of competition. In Miami, for example, dog track operators are worried about competition that would result if the jai alai season were extended.

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## CONCLUSIONS AND RECOMMENDATIONS

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**CONFLICTS OF INTEREST.** Of the 32 State racing commissions, all but 9 prohibit racing commissioners from holding any pecuniary interest in racetracks within their States. On the other hand, only seven States prohibit racing commissioners from owning horses or dogs that race in the State. Similarly, except for the Pennsylvania State Harness Racing Commission, no racing commission prohibits track owners from betting on horses running on their tracks. Although most racing States do not prohibit racing commissioners from betting on races, all States prohibit racing officials from betting. No State prohibits racehorse owners from betting on their own entries.

In any sport in which gambling is permitted, it is

important to avoid the appearance as well as the fact of wrongdoing. Hence, any situations in racing creating the potential for conflicts of interest should be carefully examined. In the course of structuring the necessary safeguards for clean racing, many activities that regularly occur without incidence of impropriety will nonetheless have to be eliminated by the States.

**Therefore, the Commission recommends that members and staff of State racing commissions be absolutely prohibited from holding any financial interest in racetracks under their regulatory jurisdiction. This restriction should include financial interests in companies directly doing business with the tracks.** These individuals should not be

placed in a position where they could make decisions favoring their own interests.

**In addition, the Commission recommends that members and staffs of State racing commissions be prohibited from placing parimutuel wagers at tracks within their States, as is now the case in several States. Nor should racing commissioners allow their horses to be raced in the State in which they hold office.** The Commission believes that the appearance of a compromise of his independent judgment outweighs the commissioner's personal interest in seeing his horse run in his home State.

Betting by racing personnel on their own entries in a race appears to be a commonplace occurrence in the industry. Present State policies prevent jockeys from wagering against their own horses, and the Commission concurs with this approach. With few exceptions, State racing commissions do not restrict wagering by animal trainers. The Commission feels that no distinction should be drawn between the betting of jockeys and trainers, since both groups have the ability to influence the performance of their racing animal directly.

**POLITICAL IMPROPRIETY.** There have been recent occasions when the integrity of a State's highest officials has been called into question because of racing-related decisions or actions. Many people within the racing industry believe that such abuses could be prevented by strict regulations prohibiting a racing commissioner from holding any financial interest in any aspect of racing in his own State.

If the idea were not obviously impractical, the Commission would recommend a prohibition on wagering on any animal by anyone involved with racing, in order to avoid the appearance, and perhaps the fact, of inside information providing some bettors with an undue advantage. **But, at the least, the Commission recommends that key racing officials—stewards, judges, and racing secretaries—be absolutely prohibited from betting on any entry.**

The practice of horsemen betting on their own horses is as old as racing itself. Before the advent of organized horseracing, horse owners arranged competitions among themselves and bet on the outcome. The Commission finds no impropriety in betting by horsemen, so long as the owners refrain from betting on horses in competition with their own.

The Commission recognizes that many of these guidelines may well be unenforceable, and that it may become necessary to determine at what level of conduct they may practically be applied, so that the most critical conflicts of interest can still be avoided.

**DISCLOSURE OF ECONOMIC INTERESTS.** Only a few States, Nevada and Illinois among them, require full disclosure of the hidden economic interests behind a nominal applicant for a license to run a racing meeting or gambling event. Past investigations have uncovered the potential problems that arise when a concessionaire holds substantial economic interests that might affect track owners' decisions. Recently, the Maryland Racing Commission, in response to a lengthy legislative inquiry,

was unable to discover the true economic interests behind a Maryland track.

Like the securities industry, racing is a business that must deal carefully and properly with other people's money. The stock exchanges are federally controlled through the Securities and Exchange Commission, a major weapon of which is its ability to force financial disclosure from public corporations. The Government views this authority as necessary to protect the public interest in the maintenance of a fiduciary relationship between the public and controllers of corporations.

A bill (H.R. 1048) that would force disclosure of ownership interests in the racing industry was introduced in the 94th Congress. The policy considerations of that bill are compatible with the Commission's viewpoint.

Nevertheless, the Commission feels that the States can accomplish the same purpose without Federal supervision. To this end, the Commission has developed model State regulations—adapted from elements of the proposed Federal bill—mandating thorough and accurate financial disclosure among all elements of the racing industry. Those regulations appear in an appendix to this Report.

**Because the Commission believes that hidden ownership in the racing industry is contrary to the public interest, it recommends that the States enact legislation requiring full disclosure of all financial interests in the operation of a racing meeting. If such legislation is not enacted by the States within 2 years, the Commission recommends that Congress enact a Federal disclosure law with these provisions.**

**LICENSING AND BACKGROUND INFORMATION.** In addition to requiring full disclosure of all parties holding financial interests in racing associations, the States also must determine which individuals connected with racing should be required to obtain licenses, and the extent to which those persons should be required to disclose information concerning their backgrounds.

Given the high interest in protecting the integrity of racing, it is essential that racing commissions have accurate information concerning the identity of all employees at the track, including the employees of concessionaires. Anyone who works at a racetrack is close enough to the conduct of the sport to merit close scrutiny, and the racing commissions should possess information concerning any past conduct of those individuals that was contrary to the best interests of racing. Employee data should include date and place of birth, fingerprints, Social Security number, any outstanding civil judgments, any criminal convictions against the employee, and the record of involvement in any administrative proceedings concerning racing. A similar requirement exists in Nevada, where employees at gaming houses are required to obtain a work permit from the sheriff and to disclose information concerning their past conduct. For racing, a licensing system would enable the racing commissions to be able fully to tabulate the necessary information on those individuals who should be denied employment at the track: The standards for banning individuals from the sport could vary depending upon the sensitivity of the position applied for. However, the NASRC should endeavor to promote consistent

standards throughout the States. Such information would then be available to all racing associations in a State, as well as to racing associations in other States through the NASRIS computer network.

**Accordingly, the Commission recommends that the States require all employees at the track, regardless of job classification, to obtain licenses and reveal background information pertinent to their close connection to racing.** The cost of obtaining such a license should be nominal, and the small burden placed upon track employees should be considered as part of their obligation to preserve the integrity of racing. The same rule should apply to all others directly involved with the sport.

State licensing practices are presently time-consuming, costly, and repetitive to members of the racing industry. Because modern racing demands much interstate travel by participants, the owners, trainers, jockeys, and others are often confronted by duplicative licensing requirements. **To alleviate this problem, the Commission recommends that the States adopt reciprocal licensing practices that would allow racing participants in good standing in one State to be allowed to race in other States.**

**TRACK SECURITY.** Currently, track security at racetracks throughout the country is primarily the responsibility of the individual tracks or private trade organizations connected with racing. Evidence from the Commission's parimutuel hearings indicates that States provide very little support or control for security at racing meets.

Although some States do provide State and local police support, tracks are forced to rely upon other means to police their meets adequately. The Thoroughbred Racing Protective Bureau, as a subsidiary of the Thoroughbred Racing Association, furnishes investigators for TRA member tracks: The other approximately 55 thoroughbred associations, representing about 20 percent of the thoroughbred handle, must rely upon authorized police agencies to make arrests. In similar fashion, Harness Track Security provides security for 33 of the 47 tracks belonging to Harness Tracks of America. The 27 other American horse tracks hire their own guards or rely on private security companies for service.

The States derive tax revenue from racing but, with the lone exception of Illinois, provide no police support for overall security and little for crowd and traffic control. Illinois charges the tracks for its police services. Because private security agencies, while doing exemplary work, are ultimately funded by the tracks, some question of their impartiality inevitably arises. While it is true that most law enforcement agencies do not presently possess the expertise necessary to provide professional levels of track security, this capability should be developed with experience.

**In light of the substantial revenues the States derive from racing, the Commission recommends that, at no additional cost to the tracks, the States should develop an expertise in track security to protect, in conjunction with the TRPB and HTS, the interests of the public and other affected persons from violations of State security laws. This should be done by racing commissioners' establishing their own security divisions. If the States do not respond to this**

**recommendation within 2 years, the Commission recommends that Congress enact Federal legislation—modeled after H.R. 1047, introduced in the 94th Congress—to effect this purpose.**

Clean racing requires an atmosphere in which the tracks are free from criminal activity, and even from the appearance of criminality. Tampering with the conduct of a horserace is among the activities that should be controlled by diligent law enforcement.

On their face, the State statutes appear to be capable of preventing this type of conduct. The question is whether the agencies responsible for enforcing these laws are performing effectively, or whether there is a need for a Federal presence to prevent race tampering. As noted, States should increase their efforts to curtail such activities. **However, should a greater commitment by the States to racetrack security not be forthcoming within 2 years, the Commission recommends that Federal law enforcement agencies be given jurisdiction to act against those who tamper with race conduct.**

Potential security problems are raised by common ownership or control of racing animals, although that danger has not become a serious problem in the horseracing field. Some dog owners charge, however, that dogtracks have begun to enlarge their operations to include the ownership of racing animals. To combat possible abuses, the greyhound racing industry has instituted safeguards such as self-grading, lockout kennels, special identification techniques, and the drawing of lots to fill race cards.

Many dog owners believe that ownership of several kennels by a single track owner is an increasing problem in their industry. The Commission is not in a position to judge this claim. It does find, however, no economic abuse inherent in the ownership of a kennel by a track under the present system of checks and balances described above. Instead, the Commission objects to the common ownership or control of kennels by one legal interest—dog owner or track owner—that is camouflaged through legal devices. Such a situation invites abuse in the treatment of racing animals by allowing one owner to treat his animals in such a way as to favor one over the others—for example, through overexercising or overfeeding. The safeguards adopted by the industry could be largely circumvented if the animals of one owner are made separate entries through the use of legal camouflage. **The Commission believes that hidden multiple ownership of kennels presents the potential for improperly affecting the outcome of greyhound racing by allowing one person to control several racing entries, and strongly recommends that States, through extensive disclosure provisions, institute and enforce prohibitions against the practice.**

**EXOTIC WAGERING.** The Commission has heard many witnesses testify on the subject of exotic wagering and most of them were in agreement: It is a bad practice, but one that is necessary for the economic survival of the industry. With this type of betting, payoffs to successful bettors can be extremely lucrative.

Veteran handicappers, who take pride in their



knowledge of horses and racing, generally disdain exotic wagering because expertise becomes less and less valuable as the odds rise. The casual racing fan is more likely to be enticed by the high payoffs. But that appeal is not always limited to honest horseplayers—criminal elements sometimes find that the long odds justify the risks they run in fixing races. Most of the recent scandals in racing have centered around exotic wagering. This may be, however, because of the recent proliferation of exotic wagering in tracks around the country, rather than because of an inherent corruption factor in such wagering.

The majority of racing industry witnesses who testified before the Commission characterized exotic wagering as a necessary evil. Despite this attitude, held by most professional horsemen, the incidence of this type of wagering has been steadily increasing. It is widely believed that track attendance would suffer if exotic wagering were abolished. No surveys, however, have yet definitely described the market for exotic wagering.

A nationwide ban on exotic wagering might reduce the incidence of race-fixing by substantially lowering its benefits to the fixers, but with the average daily track attendance already in decline, any major inroad into the popularity of racing could endanger the industry. Furthermore, the Commission has received no evidence to suggest that race-fixing would not continue even without the presence of occasionally astronomical odds. **For these reasons, the Commission recommends that no immediate steps be taken by the States to abolish exotic wagering. Consistent with its stated national policy, the Commission recommends that State racing commissions review exotic wagering policies and determine which types of wagering are most advantageous to the State and the public.**

If, after their review, the State racing commissions find a clear need for decisive policies to deal with the problems of exotic wagering, and if the States prove unable or unwilling to enact laws and regulations to meet that need, then Federal control may well be warranted in this area. In view of the fact that tracks without exotic wagering may be at a severe disadvantage to tracks that allow it, any Federal legislation in this area should be designed to insure uniformity among the States.

**TYPES OF RACING.** At present, all State racing commissions except New Hampshire's have combined jurisdiction over horseracing and dogracing in States where both are permitted.

The similarities between the two kinds of racing, and the identical public interest served by the regulation of each of these activities, suggest that a single set of rules and regulations, based on a common statute, can adequately provide for the control of both, and that a single State racing commission is capable of exercising jurisdiction over all forms of animal racing. Indeed, the development of coherent State racing policies is enhanced by placing authority to regulate all types of racing in the hands of one agency.

That said, it is necessary to identify any major differences between horseracing and dogracing, and to determine whether a single commission should adopt different policies toward each type of racing. At the present time,

dogracing practices differ from those of horseracing in two major aspects:

- Greyhound tracks employ a closed booking method in order to fill racing cards. Unlike the open entry method used in the horseracing field, this entails supply contracts between breeders and tracks. As a result, dog track owners hold much greater leverage over dogbreeders than do their counterparts in the horseracing field.
- The ownership of dog tracks is more monopolistic than that of horse tracks. In two States, Arizona and Florida, this situation is even more severe. As a result, the tracks' leverage over the dog industry in these States is great.

**Because of these differences, the Commission recommends that State racing commissions be allowed to deny a license to conduct a racing meeting to an applicant who has already received a license to conduct a race meeting of the same breed in the same racing season.** This recommendation is discretionary rather than mandatory, so that commissions have the latitude to distinguish between monopolistic situations that do not threaten an economic imbalance in the racing industry affected, and those that do.

**The Commission also recommends that no form of racing be statutorily precluded.** However, a racing commission may decide, based on the public interest in its State, to place restrictions on certain breeds of racing animals. State racing commissions should be in the best position to make these determinations. But the Commission again observes that in order to best serve the public interest, the State racing commission must employ rigorous economic analyses in making such decisions.

**The Commission also recommends that a State gaming board oversee all animal racing permitted in a State. If a State finds such a board impractical in light of existing circumstances, the Commission believes that a single racing commission oversee all animal races.** (An appendix to this Report contains a model State gaming statute.) **That agency should regulate the breeds as uniformly as possible, but distinguish among them to reflect significantly disparate industry practices.**

**ECONOMIC POLICIES.** Many, if not most, of the decisions a State racing commission is called upon to make are economic. The commission sets policy in the awarding of racing dates, the location of tracks, the number of races held, types of races held, and payment of purses and other awards. The commission also enforces the takeout rate decided by the State legislature. Yet, despite its primary economic function, the State racing commission appears to ignore the economics of the industry it regulates.

Little economic research has been done on the entire area of racing. Not much is known, for example, of the precise effect of the rate of increase in racing dates on the quality of horses and the size of the field. The size and quality of the field probably influence the handle, but no research has been done to demonstrate the relationship. The effect of mixed racing on the handle has not been investigated. Nor have the States extensively analyzed the profits from individual parimutuel industries in setting

takeout rates. Increasing takeout has been cited by track owners as a cause in the decline in daily attendance, but a complete study of this area has not been made. Perhaps most significantly, the market for parimutuel wagering on races has yet to be defined.

Nevertheless, the consensus heard by the Commission—through hearings, research, discussions with industry groups, and letters from the public—is that current on-track parimutuel wagering State takeout rates are set too high. According to some authorities, optimal on-track rates are best determined by the costs of running races. The best on-track takeout rate will therefore necessarily vary from State to State, but **the Commission believes that the present on-track State takeout structure of 15 to 17 percent should be lowered to a range of 13 to 15 percent of the handle in order to maximize revenues for the States and the racing industry, as well as to aid bettors.**

The Commission believes that the allocation of racing dates is an area ripe for reform. Most States created exclusive territorial franchises a generation ago. At the time, these restrictions prevented destructive competition between the tracks and promoted State revenues. Today, under different market conditions, the requirements that tracks be located a certain distance from each other has become an inefficient criterion for allocating racing dates. Population density, geography, and local custom provide better market guides.

**The Commission recommends that State racing commissions and the racing industry jointly fund market research programs to develop the information necessary to establish criteria for the setting of policies in such matters as takeout rates, the allocation of racing dates, and the location of tracks.** Such information would enable the commissions and the State legislatures to choose the best means to promote revenues to the State and profits to the industry by fulfilling the desires of the racing public.

The Commission recognizes, in the alternative, that if the States demonstrate an inability to resolve these economic issues successfully, congressional action may well be merited because of racing's inherent interstate aspects as well as the potential national interest in the financial health of the industry. Congress may limit takeouts, for example, on either a regional or national level, through the imposition of Federal ceilings with credit given for contributions to State governments consistent with existing formulas. **In the event that State measures prove inadequate, the Commission recommends passage of such Federal legislation.**

**COMMISSIONER ORIENTATION.** The well-being of the racing industry is dependent upon many factors, but none is more important than the enlightened guidance of knowledgeable administrators. Most statutes provide State Governors with few guidelines for appointing racing commissioners, although a few are like Illinois', which requires that "[e]ach [commissioner] shall have a reasonable knowledge of harness or thoroughbred racing practices and procedure and of the principles of harness or thoroughbred racing and breeding. . . ." **The Commission recognizes that State Governors, even in States without official guidelines, make appointments to State racing**

**commissions in accordance with the best interests of the State and take into consideration their appointees' expertise in different fields; it therefore recommends no changes in the methods of appointing commissioners.**

Because of diversity of backgrounds of the appointees, the Commission believes that a minimum standard of orientation as to their responsibilities should be made available to new racing commissioners. Training courses could provide an overview of the industry's economics, its administrative structure, and its security needs. On-the-job training would be kept to a minimum, with resulting benefits to the public, the industry, and the racing commissioner.

**The Commission recommends that the National Association of State Racing Commissioners initiate such a program, in conjunction with existing training programs that provide specific expertise in racing, such as the school for stewards run by the Jockey Club.**

**ANIMAL MEDICATION.** Medication standards in racing are a continuing source of controversy. Initially, there were no controls over many drugs and other medicines. With the advent of more exact testing methods and a higher concern for the integrity of racing, progressively more restrictive standards were imposed, until some jurisdictions pronounced an absolute ban on medications of any kind, including such a widely used analgesic as phenylbutazone. The effect of prohibitory medical regulations peaked with the disqualification of Dancer's Image as the winner of the 1968 Kentucky Derby upon the discovery of phenylbutazone in the horse's postrace urine sample. Since that time, some States, Kentucky among them, have eased their bans on medications and prohibited only stimulants, depressants, narcotics, and local anesthetics. Medicinal compounds, such as analgesics and some ointments which do not impair or exaggerate the performance of a racing animal, are more often permitted today.

Controlled medication standards allow a racing animal to run more days during the year. With the recent trend toward increasing racing dates, horse owners find their animals in greater demand to fill out the proportionately greater number of cards. But even with controlled medication, the number of short fields in horseracing is increasing. Economic pressures have driven horse owners to push for permissive medication rules. Proponents of controlled medication also argue that horses are not being pushed beyond their natural abilities by the permitted medicines, and that bettors rely on a horse to run true to form.

Disclosure to the public of medication to an entered racing animal in those States that permit medication is also a subject of debate. Disclosure is favored as a consumer protection measure that aids the bettor in choosing an entry. Disclosure is opposed as a misleading indicator of the animal's ability to run, since many other factors, not similarly made public, also have an effect on its speed in a race. Further, disclosure may pressure a trainer to medicate a racing animal unnecessarily, either in the belief that it will affect its performance (the betting public believes, often erroneously, the medication will improve



an animal's performance), or to prevent a healthy animal from being claimed after a claiming race.

Controlled medication is itself criticized. The effects of many permitted drugs upon racing animals are not fully known. As noted elsewhere in this Report, fundamental research in many areas of racing has yet to be done.

The Commission recognizes the helpful research done by the American Association of Equine Practitioners and the Association of Official Racing Chemists and believes that the standards they have formulated for the racing industry should and will be adopted. There is, however, a great need for research into the physical effects of drugs upon racing animals; the States, acting separately, may never be able to generate the resources necessary for the AAEP and the AORC to examine these problems fully. The Commission feels that the racing industry would benefit from the cooperation of the Food and Drug Administration in developing standards governing approval of the medication for use in racing animals. The FDA is the agency of the Federal Government responsible for the safe dispersal of medications to the public. If it were to set forth the proper testing procedures before a drug could be allowed to be used in racing animals, it would greatly aid the determination of the effects of medications on the animals. Such a modest commitment by the Federal Government would promote uniformity of State medication policies without interfering with the ability of the States to make a final determination on this matter.

**The Commission recommends that the racing industry, in cooperation with such groups as the American Association of Equine Practitioners and the Association of Official Racing Chemists develop uniform drug detection and analytical standards governing the medication of racing animals.**

**JAI ALAI.** Parimutuel wagering is not confined to animal racing. Jai alai is played legally in Florida, Nevada, and Connecticut. Rhode Island has legalized parimutuel wagering on matches, although it does not yet have an operating fronton.

The State of Florida, which has been regulating the sport for more than 40 years, has found no instances of dishonest practices. This finding should not be interpreted to mean that opportunities for corruption do not exist. The Commission believes that many of the same dangers of corruption found in racing are present in jai alai. These include the potential bribing of participants in order to affect the outcome of the games, drugging of the players, and the arranging of matches that do not truly equalize the skills and abilities of the players. Because fronton owners handle the public's money, the State licensing them must not allow criminal elements to gain positions of ownership or to influence fronton owners through economic leverage. Thorough and sophisticated financial disclosure laws reduce the likelihood of criminal elements gaining control of fronton operations.

Regulators in Florida and Nevada stress the strict security employed by their States and the integrity of the participants as reasons for jai alai's honest image. The Commission believes that both States are regulating the game adequately. Problems may arise, however, if there is a rapid expansion of the game among the States.

The major problem—the unfamiliarity of the public and State regulators with the rules of jai alai and with the players performing in the frontons—could heighten the potential for dishonest practices within the sport. Jai alai players have had a long tradition of honesty in the conduct of their sport. The current pool of players, however, is rapidly being exhausted by the recent expansion in the number of frontons, and whether this tradition will remain is unknown. However, the present system of prize money awards based on individual performances may help insure jai alai's continued reputation as a game honestly played.

**The Commission recommends that any State that introduces jai alai as a forum for legalizing gambling should exercise a high degree of caution regarding both the quality of the players and the regulatory procedures used in overseeing the sport. Florida provides a good regulatory and policing model for States interested in jai alai.**

# OFF-TRACK BETTING

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The history of off-track betting in the United States is almost as long as that of horseracing itself. The invention of the telegraph made large-scale illegal bookmaking away from the track both possible and profitable. Although off-track wagering was not legalized until well into the 20th century, horserace bookmakers flourished in almost all of the Nation's cities. Some of their best customers were policemen and politicians.

But legal off-track betting is a relatively new phenomenon. When New York State legalized the country's first off-track parimutuel wagering system in 1970, it legitimized a well-established but generally disreputable profession. After only 5 years of operation, OTB in New York State is expected to generate a handle of about \$1 billion in 1976, which translates into more than \$150 million for governments and racing. OTB in New York has created about 4,200 new jobs—2,700 of them in New York City alone—and contributes more than \$75 million annually to the State and local governments. Apart from its considerable impact on the economy, OTB has affected the betting habits of people who have access to it. In attempting to entice customers away from the illegal books, it also inevitably attracts some people who

had no previous experience with either racing or commercial wagering.

Finally, the introduction of OTB has generated a great deal of controversy. OTB has many opponents both within and outside racing—those who question the fairness of the current system's distribution of revenue, its ability to compete with illegal wagering operations, its effect on the racing industry, and, perhaps most importantly, the propriety of government as the operator of a gambling enterprise. While the racing industry is not unanimous in its reaction to the concept of intrastate off-track betting, it is unified in its opposition to all forms of interstate OTB. On the other side of the issue are those who view OTB—both intrastate and interstate—as a positive economic force capable of benefiting the racing industry, the wagering public, and the governments that operate or regulate it.

This section examines New York State's off-track betting system, concentrating on New York City's, the oldest and largest component of the system. The section also examines the controversy surrounding OTB. Off-track betting has been characterized both as a boon to racing and as its death knell. Without taking sides in the controversy, the Commission has attempted to devise a model intrastate OTB system that equitably serves the interests of all participants.

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## HISTORY AND DEVELOPMENT

The establishment of the New York City Off-Track Betting Corporation in 1970 was the culmination of a 20-year effort to legalize off-track betting in New York State. In 1951, a legislative committee recommended against the establishment of any OTB system. Another committee was appointed in 1958 to study the feasibility of off-track betting in New York City. That committee recommended the establishment of a government-operated off-track betting system. Bills to create such a system were introduced in the State legislature every year thereafter but were never reported out of committee.

During the mid-1960's, accelerating revenue problems in New York City prompted additional research into the feasibility of off-track betting. In a nonbinding referendum held in New York City in 1965, voters overwhelmingly approved the concept of OTB. Nevertheless, efforts toward legalization continued to fail. By 1970, the severity of New York City's fiscal crisis made it apparent that extraordinary revenue-raising measures were needed. That year, over the strong objections of the racing industry, the legislature enacted two off-track wagering statutes.

The first statute created the New York State Off-Track Parimutuel Betting Commission, a State agency whose function was to set policy and regulate the local option plans of participating municipalities. The law stipulated that city or county governments authorizing OTB had to

provide the opportunity for a voter referendum to take place. The second statute established the New York City Off-Track Betting Corporation.

The first OTB offices opened in New York City in April 1971. Delayed branch openings, computer difficulties, objections by on-track unions, and inharmonious relations between OTB and the racing industry caused initial earnings to be far lower than had been predicted. By 1973, the OTB handle had increased significantly.

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## Expansion of OTB

The Schenectady Off-Track Betting Commission was organized as a municipal agency in 1971 and began taking bets in July 1972. Following 1973 amendments to the OTB legislation, the Schenectady OTB Commission made plans to reorganize as part of the Capital Regional Off-Track Betting Corporation, a public benefit corporation that began operation in 1975. Capital Regional OTB serves 14 counties in northeastern New York, 7 of which have joined OTB. In May 1974, the Western Regional Off-Track Betting Corporation began operations. The Western Region covers 16 counties, 11 of which have joined OTB; it includes two major cities, Buffalo and Rochester. In January 1975,

CHART 5-3.—FOREIGN OFF-TRACK BETTING OPERATIONS

Country	When authorized or started	Objectives	Structure	Operation
Australia	1958—Royal Commission authorized off-track betting. 1961—Victoria, first of six states to begin operation.	Combat illegal bookmaking operations and raise revenue for government.	Under supervision of nonprofit Totalisator Agency Boards (TAB). TAB's made up of racing officials.	TAB operates branch offices and issues franchises. Franchise agents receive salary plus commission. Thirteen percent takeout on and off track. Bets taken on greyhound and horseraces.
Great Britain	Credit-only OTB betting always legal. Cash OTB legalized in 1960.	Eliminate illegal cash bookmaking.	Bookmakers are private enterprise. Government operates a toteboard agency that competes with private bookmakers.	Licensed bookmakers run their own offices and pay taxes to government. Toteboard agency does the same. Eighteen percent takeout on and off track. Bets taken on sporting events, elections, many others. Bookies handle 85 percent of off-track business.
France	Authorized 1930 as private enterprise. After WW II Pari Mutuel Urbain (PMU) took over. Offices are franchised.	Discourage illegal bookmaking, raise revenue for horseracing and for government.	PMU controlled and managed by five Parisian racing societies under loose government supervision.	Most OTB's operated by franchised agents. Agents receive commission for accepting bets. PMU also operates a few betting shops. Twenty-seven percent takeout on and off track, but higher takeout on OTB exotic wagers. Horse bets only.
Japan	Authorized and began operations in 1948.	Revitalize horseracing industry.	Japan Racing Association controls and manages on- and off-track wagering. Some government supervision.	Japan Racing Association operates on- and off-track wagering. Twenty-five percent takeout on and off track. Bets taken on horseracing, bicycle, motorcycle and boat racing.
New Zealand	Referendum approved 1949; started 1951.	Eliminate illegal bookmaking.	Totalisator Agency Board (TAB) made up of racing officials under some government supervision.	TAB operates some offices. Most are franchised; agents receive salary plus commission. Eighteen percent takeout on and off track. Bets taken on horseracing, greyhound racing.
Puerto Rico	Legalized in 1913. Present form started in 1948.	Raise revenue for government and racing industry.	San Juan Racing Association is private corporation under some government control.	Franchised agents receive about 10 percent commission from San Juan Racing Association. Takeout varies by type of bet, not by location. Bets on horseracing, lotteries, and casino gambling.

Source: New York City Off-Track Betting Corporation, Testimony by Paul R. Screvane before National Gambling Commission, May 6, 1975.

Nassau County opened its first branch office. The Suffolk Regional Off-Track Betting Corporation opened its first offices in April 1975. A sixth OTB operation began in the Catskills region of New York in April 1976.

In May 1976, Connecticut became the second State to legalize off-track parimutuel wagering. Until a racetrack opens in the State, Connecticut will use New York State horseraces exclusively.

## OTHER OTB OPERATIONS

### Foreign OTB

Other major off-track betting countries are Australia, England, Ireland, France, Japan, and New Zealand. Puerto Rico, a United States territory, also has off-track betting. Although there are some similarities between the various operations, each country has adopted its own approach to OTB. Chart 5-3 summarizes the structure and operation of the foreign OTB systems.

### OTB and Sports Betting in Nevada

In 1949, Nevada began licensing bookmakers to accept wagers on horseraces run anywhere in the country and on most sports events, the exceptions being amateur sports contests taking place within Nevada and events occurring outside the State in which a Nevada team is a participant. Bookmakers are permitted to accept telephone wagers only from residents or visitors within the State. They also are permitted to lay off bets to other licensed bookmakers in Nevada.

Bookmakers are required to pay a 2-percent Federal excise tax on gross wagers and to purchase a \$500 occupational stamp for each employee. Prior to December

1, 1974, the Federal excise tax had been 10 percent and the occupational stamp \$50. Bookmakers who desired to pay the 10 percent tax found they were unable to compete with their illegal counterparts. As a result, some bookmakers underreported their gross wagers while others simply found it more profitable to continue operating illegally and without a license. Reduction of the excise tax improved the situation somewhat. Smaller volume bookmakers, however, still have difficulty paying the tax, and underreporting of gross wagers still occurs. Bookmakers also are subject to State and county license fees.

Table 5-34 shows the total wagers and gross wins (before expenses) of licensed bookmakers for 1974 and 1975. With the reduction of the Federal excise tax, the volume of horserace betting doubled in 1975 over 1974 and sports book volume increased fivefold. The number of licensees also increased—30 percent for race books and 100 percent for sports books.

Many of the licensed bookmaking operations in Nevada are only marginally profitable. For example, out of gross wagers of almost \$13 million during its first 9 months of operation, Las Vegas' Union Plaza Hotel's race and sports books showed profits of \$35,902, or about 0.3 percent.

TABLE 5-34.—NEVADA SPORTS AND RACE BOOKS, 1974-1975

Year	# of locations	Race books		# of locations	Sports books	
		Total wagers	Gross win		Total wagers	Gross win
1974						
3/31/74		\$ 4,489,442	\$ 855,046		\$ 1,258,006	\$ 49,396
6/30/74		5,567,801	1,019,370		1,151,206	105,454
9/30/74		5,109,796	823,788		1,749,635	236,571
12/31/74		4,582,117	761,825		3,973,217	408,442
Total	11	\$19,749,156	\$3,460,029	8	\$ 8,032,064	\$ 799,863
1975						
3/31/75		\$ 8,155,935	\$1,221,467		\$ 4,051,808	\$ 43,846
6/30/75		10,182,260	1,457,536		3,415,051	271,500
9/30/75		10,336,609	1,485,712		7,406,861	588,716
12/31/75		12,035,014	1,677,021		26,170,323	2,105,936
Total	15	\$40,709,817	\$5,841,736	16	\$41,044,048	\$3,009,998
Percent Change 1974-1975	+36	+106	+69	+100	+411	+276

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## STRUCTURE OF OTB IN NEW YORK

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In 1973, amendments to the OTB legislation dissolved New York's Off-Track Parimutuel Betting Commission and established in its place the State Racing and Wagering Board, an umbrella agency responsible for overseeing all parimutuel operations in the State. The 1973 amendments also established the mechanism for the creation of seven regional off-track betting corporations in addition to the New York City operation. Under this act, a minimum of three counties within each region (except for Nassau and Suffolk Counties, each of which constitutes a separate region), representing at least 30 percent of the population of the region, had to agree to the formation of a public benefit corporation before the end of 1975 or lose their right to enter into the OTB business. Once plans have been drawn up for the formation of a regional OTB corporation, individual cities or counties with populations of more than 150,000 are eligible to participate. After a city or county authorizes participation, an individual is selected to represent the jurisdiction on the corporation's board of directors. New York City has five directors, appointed by the mayor, two of whom serve at his pleasure and three of whom serve 6-year terms.

These public benefit corporations include features both of governmental agencies and private businesses. A corporation's purchasing and personnel policies follow governmental practice. New York City OTB employees, for example, are part of the civil service system. Broad policy decisions are made in liaison with city or county governments.

Each OTB corporation is required to complete a monthly accounting of its expenses to the State Racing and Wagering Board. In addition, the New York State Department of Audit and Control is required to review the accounts of the corporations annually. All of the OTB

corporations have their accounts audited by independent CPA firms as a supplement to these procedures. OTB corporations are entitled to sell bonds to raise money, but if they default in their payments to bondholders, the participating municipalities are not responsible for assuming the corporation's debts. OTB corporations pay no direct State real estate tax, and no State or Federal income tax.

OTB corporations have adopted many of the management, marketing, and operational procedures employed by private enterprise. Like private businesses, the OTB corporations are production- and sales-oriented. They measure their progress by the amount of money bet and the number of new telephone accounts opened. Like private business, OTB advertises its product in the media. But while the everyday operations of an OTB corporation closely resemble those of many private companies, there are significant differences between the two with respect to basic policy decisions. As a governmental entity, OTB is ultimately responsible to the public, but what is best from the point of view of public policy is not always best for business. A private business, for example, would be inclined to close unprofitable sales outlets, whereas OTB generally maintains its marginal branch offices as a service to the people who use them, as a potential local competitor of bookmakers, and as a means of providing employment for local residents. Advertising is another area in which the interests of business must be weighed against the public interest. A media saturation campaign of the type employed by many large corporations might boost the OTB handle significantly, but if viewed as a strong inducement to gamble, it might be considered contrary to the public's best interest.

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## MECHANICS OF OTB

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The business of off-track betting is conducted at branch offices, or betting shops. These facilities are austere in appearance and contain no seating in the public area in order to discourage loitering. The sale and consumption of food and beverages are prohibited.

In compliance with OTB interpretations of Federal law regarding the interstate transmission of wagers, separate parimutuel pools are maintained for out-of-State races.<sup>36</sup> In the case of in-State races, however, OTB wagers from all over New York State are transmitted to the track and combined into a single parimutuel pool to produce a uniform on- and off-track payout price for each race.<sup>37</sup> Separate pools are maintained, with approval of the track and the State Racing and Wagering Board, when OTB offers exotic wagers<sup>38</sup> not available to track bettors.<sup>39</sup>

OTB patrons cannot make last-minute wagering decisions because changing odds are not posted. Bets at an OTB branch office currently can be placed up to about

25 minutes before a race.<sup>40</sup> Thus, unlike the track bettor, the OTB patron cannot presently parlay his winnings on a race-to-race basis, which reduces the "churn" or rebetting of winnings, an important component of the handle of any parimutuel wagering operation. Another difference between OTB and the tracks is that the latter have separate windows for different transactions, while OTB's computers enable each cashier to perform all of the different selling and cashing transactions that make up the wagering system.

A customer who wishes to place a wager with OTB obtains a printed entry sheet listing the horses running by track and race number. After checking the track boards for the latest scratches and jockey changes, which are phoned in by OTB employees at the track, the customer makes his selection by filling out the betting slip and passing it along with the required amount of money to a cashier at one of the betting windows. The cashier then

enters the bet into a terminal connected with a computer in the main office, and within seconds the computer causes the terminal's ticket-issuing machine to print a ticket.

OTB employees at the tracks communicate race results to the main office, where the results and payoff prices are entered into a computer and relayed to branch offices. A recent innovation by Capital Regional and New York City OTB is the broadcasting from OTB headquarters to branch offices of race results and other betting information.

After race results have been posted, winning ticket-holders present their tickets to the cashier, who enters the ticket's serial number into the computer terminal. After verifying the serial number, the computer indicates the amount of the payoff on the terminal's screen in front of the cashier. The computerized serial number system was introduced by New York City OTB and has subsequently been adopted by other countries. The system virtually prevents the counterfeiting of tickets. With the aid of this and various other computer-based security systems, OTB corporations have been able to minimize losses attributable to theft and error.

OTB customers also may phone in their bets. Under this system, a customer opens up a deposit account with OTB. He then may place wagers by telephone so long as his account contains enough money to cover his bets. In New York City, the average telephone account contains \$114. OTB does not extend credit to any customers, and in this respect it is not competitive with illegal bookmakers. Each OTB telephone bet is tape-recorded for the mutual protection of the account holder and OTB. As of July 1, 1976, New York City OTB had 42,951 telephone accounts, of which approximately 2,200 were active on a daily basis. The number of telephone accounts has declined as a result of the surcharge on OTB winnings (discussed below). Although OTB is prohibited by law from accepting telephone wagers from out-of-State callers, in most cases it is impossible to determine the origin of calls.

In addition to serial-numbered tickets and telephone accounts, OTB has experimented with other new ideas in parimutuel wagering. It has introduced new types of bets not available at the track, such as the "Pick 4" and the "Double Exacta." In addition, it has created a sweepstakes on the Triple Crown; 10 winners selected in drawings each receive the equivalent of a \$50 win ticket. But the most significant innovation of OTB has been its comprehensive advertising campaign.

Advertising is an important facet of OTB operations. New York City OTB now spends more than \$1 million a year to market its product (see table 5-35). The stated purpose of OTB advertising is to educate the public about how OTB operates and to lure customers away from illegal bookmakers. OTB officials believe that many people are reluctant to use OTB instead of their own bookmakers because they do not understand how OTB works. Another aim of OTB advertising is to remove the "moral taint" from this type of wagering. (Advertisements employing this theme feature prominent persons wearing OTB T-shirts.) OTB ads appear on television and radio, in newspapers and magazines, and on subways and buses. New York City OTB has also tried to increase the public's awareness of and interest in racing by sponsoring television coverage of both local and out-of-State races that can be viewed on one of the local TV stations, and by helping to create new televised racing events, such as the annual OTB-Monticello Classic. Current State regulations prohibit the viewing of live televised races at OTB shops, but in the future this policy may be changed.

OTB advertising has been the subject of criticism by those who believe that certain facets of the advertising program constitute an inducement or exhortation to gamble. They cite, in particular, the ads in which prominent persons appear. This type of advertising, they claim, is inappropriate for a government agency.

TABLE 5-35.—ADVERTISING BUDGETS OF OTB CORPORATIONS, 1975

Corporation	Handle	Advertising	Advertising as % of handle
New York City	\$773,530,558	\$1,455,000	0.19
Nassau	28,000,000	74,961	0.26
Suffolk	36,000,000	21,308	0.06
Schenectady (to 8/10/75)	40,000,00	35,676	0.09
Capital (from 8/11/75)	(total for year)	(total for year)	(average for year)
Western	57,058,554	271,382	0.47
Catskill	(began operation in 1976)		

## OTB REVENUE

The New York OTB statute provides that 83 percent of the OTB handle (less breakage) be returned to winning bettors on straight bets (win, place, and show, and all two-horse selections) and that 75 percent be returned on exotic wagers.<sup>41</sup> The same percentages apply to on-track races in New York. But the distribution of the takeout (the amount not returned to bettors) is radically different. The on-track takeout is divided among only three entities—the State, tracks, and horsemen—while a fourth partner, local

government, receives a share of the off-track takeout. Table 5-36 shows the distribution of on-track and off-track takeout.

The takeout is divided among the tracks (which by statute must pay half their share to horsemen in the form of purses) and the government(s) conducting OTB. Expenses are deducted from the government's share of the takeout. New York State collects revenue from OTB through a tax on the gross handle. In New York City, about

TABLE 5-36.—DISTRIBUTION OF ON-TRACK AND OFF-TRACK TAKEOUT IN 1975, NEW YORK STATE

	Percent of handle			
	On-track		Off-track***	
	Straight	Exotic	Straight	Exotic
New York Racing Association (NYRA) Tracks (Aqueduct, Belmont, and Saratoga)				
Total takeout	17	25	17	25
To government(s)	9	15	13.5*	18.5*
To tracks and horsemen	8	10	3.5	6.5
Harness and Other New York State Thoroughbred Tracks				
Total takeout	17	25	17	25
To government(s)	(sliding scale that increases State's share as handle increases)		13.5*	18.5*
To tracks and horsemen			3.5**	6.5**

\*OTB expenses are deducted from governments' share of takeout.

\*\*These are averages. Actual figures are: (1) Straight bets—4 percent to small upstate tracks, 3.5 percent to thoroughbred tracks, and 2.8 percent to metropolitan New York harness tracks; and (2) Exotic bets—7 percent to upstate tracks, 6.5 percent to thoroughbred tracks, and 6.5 percent to metropolitan New York harness tracks.

\*\*\*Figures exclude surcharge on OTB winnings, the effect of which is to increase the OTB takeout on straight bets from 17 percent to 21.5 percent and on exotic bets from 25 percent to 28.75 percent.

NOTE: New York State has recently enacted legislation designed to

offset some of the plant improvement and construction costs undertaken by New York Racing Association tracks. Retroactive to January 1, 1976, the State receives only 5 percent of the on-track handle on NYRA races with the remaining 12 percent going to tracks and horsemen; on exotic races the State receives 7.5 percent, and the tracks and horsemen receive 17.5 percent. The legislation also contains "recapture" provisions designed to put a ceiling on NYRA's profits; and it provides for more frequent audits by the State Comptroller of NYRA's finances.

7.6 percent of the handle is devoted to expenses; 11.9 percent is distributed to State and local governments; and 4.1 percent is paid to the tracks and horsemen (see table 5-37).

Table 5-38 shows the distribution of New York City OTB revenue to tracks, to special breeding funds, and to city and State governments. From 1972 (the first full year of OTB) to 1975, the OTB handle increased about 71 percent, reflecting the addition of many new branch offices. However, in the fiscal year ending June 30, 1975, the New York City OTB handle was lower than it was the previous year, an occurrence that many observers attributed to the imposition in July 1974 of a 5 percent

surcharge on OTB winnings.<sup>42</sup> The effect of the surcharge has been to increase the OTB takeout on winning straight bets from 17 percent to 21.15 percent, and on exotic wagers from 25 percent to 28.75 percent. Surcharge revenue is divided between the municipality conducting OTB and the local governments having jurisdiction over the tracks involved.

Testimony before the National Gambling Commission revealed that some bettors strongly oppose the surcharge and have ceased to bet with OTB as a result.<sup>43</sup> New York City OTB lost about 35 percent of its total telephone account handle and 79 percent of its handle on telephone accounts with monthly activity of \$1,000 or more. There is evidence that many of the high volume bettors have gone back to their illegal bookmakers, who offer more favorable odds. Proponents of the surcharge had predicted that people who stopped betting with OTB as a result of the surcharge would begin betting at the track instead. But there is no indication that this has occurred; the decreased OTB handle has not been accompanied by corresponding increases in track handles. About two-thirds of OTB bettors in 1974 were aware of the surcharge; they said they would use OTB more often if the surcharge were repealed.

Balancing these negative effects are assertions that the surcharge on OTB winnings is an effective method for raising additional revenue for governments. Studies have shown that OTB patrons are less sensitive than track patrons to changes in the takeout rate.<sup>44</sup> Thus, the imposition of a reasonable surcharge on an OTB operation could well result in additional revenue for both racing and government, depending on how it is distributed. The fact that the New York surcharge appears

TABLE 5-37.—DISTRIBUTION OF OTB TAKEOUT, 1975

Corporation	Expenses	Percent of handle		Total
		State & local govern-ments	Tracks/horsemen	
New York City	7.6	11.9	4.1	23.6
Nassau	6.0	11.0	5.0	22.0
Suffolk	6.9	13.1	3.9	23.9
Schenectady (to B/10/75)	8.9	10.0	4.0	22.9
Capital (from B/11/75)	10.6	8.5	4.1	23.2
Western	11.5	7.6	4.2	23.3
Catskill (began operation 1976)				

NOTE: The above percentages include surcharge revenue.

to have substantially reduced the OTB handle may indicate that the tax is too high, not that the surcharge itself is a counterproductive means of raising revenue. If OTB is viewed primarily as a tool for increasing government revenue, then the surcharge must be judged a success; if OTB is viewed primarily as a competitor of illegal

bookmaking, however, the surcharge must be seen as counterproductive. In any event, the surcharge on New York City OTB alone produced \$32 million for governments in 1975 (not taking into account the much smaller amount lost as a result of the decreased 1975 OTB handle).

TABLE 5-38.—DISTRIBUTION OF NEW YORK CITY OTB REVENUE, 1971-1975

	Calendar year					
	1971	1972	1973	1974	1975	Totals
OTB Handle	\$118,588,582	\$450,316,518	\$691,279,639	\$786,711,624	\$773,550,528	\$2,820,446,891
OTB Payments to Tracks						
NYRA*	596,478	4,741,549	8,847,275	15,794,149	16,084,359	46,063,810
Roosevelt	394,783	2,491,825	3,313,155	6,658,627	4,994,254	17,852,644
Yonkers	486,084	2,344,730	3,545,658	4,451,873	6,758,977	17,587,322
Monticello	128,080	899,118	594,888	656,866	1,147,812	3,416,764
Out-of-State		783,333	945,277	1,335,799	1,950,061	5,014,470
All Other			1,183			1,183
Total	\$ 1,605,425	\$ 11,250,555	\$ 17,247,436	\$ 28,897,314	\$ 30,935,463	\$ 89,936,193
OTB Allocations to Breeding Funds:						
Thoroughbred Breeding and Development Fund			153,854	306,723	300,468	761,045
Agriculture and NYS Horse Breeding Development Fund			155,898	396,497	391,271	743,648
OTB Earnings for New York City	3,138,654	16,065,590	39,031,273	54,232,455	64,086,434	176,554,406
OTB Earnings for New York State	1,819,582	8,767,843	16,311,698	18,087,810	18,361,538	63,348,471
OTB Surcharge Earnings for Other Local Governments				4,682,066	9,436,700	14,118,766

\*The three New York Racing Association tracks are Aqueduct and Belmont in the New York City metropolitan area and Saratoga in upstate New York. NYRA conducts thoroughbred racing at its three member tracks.  
Source: New York City Off-Track Betting Corporation.

## THE OTB CONTROVERSY

Off-track betting became a controversial subject long before its establishment in New York in April 1971. The principal adversaries in the OTB debate have been the racing industry on one side and State and local governments on the other.

The racing industry fought the establishment of OTB and continues to resist its expansion on an interstate basis. Today it is not so much the existence of OTB as the manner in which it is structured that arouses strong opposition within certain racing quarters. Many of the racing industry's objections to intrastate OTB are really objections to the OTB model that New York State has chosen to adopt, and to the evolution of that model.

A jurisdiction contemplating the establishment of an OTB operation has many structural alternatives available to it; the model ultimately selected should depend primarily on what it hopes to accomplish through legalization of the activity. Among the potential objectives of an OTB system are the following: to revitalize the racing industry or individual segments of it, to combat crime, to provide recreation for the public, to decriminalize a

gambling activity so that police can spend more time controlling other crimes, and to raise revenue for government. An OTB system may, of course, encompass more than one of these objectives, provided that they are not mutually exclusive. For example, if the overriding goal of the OTB system is to maximize State profits, then the tracks' and horsemen's share of the handle will be relatively low. Once the goals have been established, decisions can be made regarding the structure of the OTB operation, the size and distribution of the takeout, the location of OTB offices, and the services provided.

When New York State enacted legislation permitting the establishment of OTB, it had two primary goals in mind: to raise revenue for the city and State treasuries and to combat illegal gambling. A secondary objective was to aid the racing industry. The desire to generate revenue for governments was uppermost in the minds of legislators, however, and the New York OTB model was an obvious reflection of that preference. The original OTB legislation gave almost all of the OTB takeout to government, leaving only between 1 percent and 1.5 percent of the handle for



tracks and horsemen to divide. The legislation also stipulated that the tracks were to receive dollar-for-dollar reimbursement for losses in handle and attendance that could be traced directly to OTB. The commission responsible for regulating OTB was assigned responsibility for determining what the compensation should be. This provision failed to result in any additional payments to the racing industry.

1970 was a record year for New York City's racetracks, but in 1971 average daily attendance and handle decreased slightly, followed by a substantial decline in 1972. Racing industry spokesmen attributed the decline primarily to OTB, while OTB proponents blamed other factors as well, such as a depressed economy, a strike at Aqueduct that resulted in the loss of 17 racing days, a 1 percent increase in the takeout rate, deteriorating track facilities, rising admission and parking prices, and increased competition from other leisure industries. Legislative amendments to the off-track betting statute in 1972 placed a temporary moratorium on OTB expansion and increased horse and track owners' share of the OTB handle on a temporary basis. At the same time, the Governor of New York appointed a Commission on the Future of Horseracing in New York (the Delafield Commission) to study the OTB problem and recommend changes. Additional amendments to the OTB legislation in 1973 incorporated some of the commission's recommendations; they increased the tracks' and horsemen's share of the takeout to their present levels and specified the tracks on which OTB could take bets. The legislation also eliminated the reimbursement provision discussed above, and it raised to the status of a primary objective the goal of aiding the racing industry.

These new measures unquestionably improved matters, but the extent of that improvement remains a topic of debate between the racing industry and OTB in New York. Many racetrack owners, perhaps because their experience with OTB has been limited to the New York model, believe that OTB would be unacceptable anywhere. They view OTB as their competitor, believing that OTB payments to tracks fail to compensate for the toll OTB exacts in decreased daily attendance and handle. OTB advocates, on the other hand, attribute current racetrack problems to other factors—principally the industry's alleged failure to take steps to expand its market as the number of racing dates increased. They believe that OTB is essential to the growth of racing—that in New York it has already benefited horsemen, and, in the future, will benefit the tracks as well.

Track owners who have reluctantly come to accept the existence of OTB would prefer to see it structured after the French system, in which off-track betting is operated by the same groups that conduct racing. At the very least, they want the track's share of the handle to be the same in OTB as it is at the track. Among horsemen, whose interests do not always coincide with those of the track owners, are those who prefer that OTB be operated by an entity other than the tracks or racing associations. Many horsemen also believe that racing's share of the takeout

should be divided equally between the tracks and themselves, a policy currently followed by OTB pursuant to New York State law, but not by all New York racetracks.

The OTB problem is a complex one, partly because so many different—and often competing—interests are involved. A change in the OTB structure or regulations designed to benefit one interest may have to be accomplished at the expense of another. An example is the surcharge. The New York surcharge achieved its primary objective of raising additional revenue for New York City. But there is evidence that the surcharge has also resulted in reduced revenue for tracks, horsemen, and the State. There is also little doubt that the surcharge has resulted in increased business for illegal bookmakers. Tracks, horsemen, and breeders of racehorses also may have competing interests, so that an accommodation made for one may be unacceptable to the other. Finally, there is competition for OTB revenue between the different types of racing—thoroughbred, harness, and more recently, quarter horse racing—and between tracks in different areas of one State or in neighboring States.

Much of the OTB debate revolves around statistics, the interpretation of which often depends upon which side is being defended. Following are three statistical portraits of the New York City OTB operation, along with opposing interpretations of each.

Table 5-39 shows the additional revenues to government that OTB has been responsible for generating. During its

TABLE 5-39.—NET ADDITIONAL REVENUES TO GOVERNMENT AS A RESULT OF NEW YORK CITY OTB, 1975 COMPARED TO 1970\*

	(In millions) 1975
Government's share of OTB handle	
1975 OTB handle	\$773.6
Revenue distributed to:	
New York State	18.4
New York City	64.1
Other local governments	9.4
Total	\$ 91.9
Government's share of on-track losses (resulting from decreases in daily handle) 1975 over 1970:	
Flat tracks (10.2 percent share of takeout × 14 percent decrease in handle × \$3,174,000 handle per day × 263 days)	\$ 11.9
Harness tracks (11 percent share of takeout × 4 percent decrease in handle × \$2,056,200 handle per day × 309 days)	2.8
Total	\$ 14.7
Net gain	\$ 77.2
Distribution of net gain	
To New York State	\$ 3.7
To New York City	64.1
To other local governments	9.4

\*1970 base year for flat tracks; 1971 base year for harness tracks.

first 2 years of operation, the revenue OTB produced for government was not sufficient to offset losses produced by decreased track attendance and handle. But, as the table shows, OTB contributions to the New York City and State governments in 1975 resulted in a net gain of more than \$77 million over 1970 levels. OTB proponents present these figures as evidence that OTB is achieving one of its principal goals—to generate revenue for the needy city and State treasuries. But to some opponents of OTB, these figures underscore what they perceive as the current system's fundamental inequity—that it enables governments to increase their revenue from racing while the racetracks providing the product deteriorate. Government should not be further enriched, they claim, at the expense of private enterprise, but only as a result of, or in conjunction with, the financial success of that enterprise.

Table 5-40 computes track losses in 1975 compared with 1970—the last full year without OTB. OTB contributions to the tracks in 1975 covered about \$14 million of the theoretical \$20 million loss experienced as a result of decreases in average daily attendance handle. It is important to note here that these figures do not represent actual losses to the tracks, but, rather, money that the tracks would have earned if 1975 average daily attendance and handle had equaled 1970 levels. New York City harness tracks operated in the black in 1975. NYRA's average daily revenues in 1975, including revenue from OTB, had risen by 23 percent over 1970 levels, but greatly increased expenses, including heavy debts from

previous years, resulted in a loss of more than \$3 million in 1975. Because OTB proponents believe that decreases in on-track daily attendance cannot be attributed solely—or even primarily—to OTB, they believe that the New York tracks sustained fewer losses than they would have if off-track betting did not exist. They point out that tracks all across the country, and particularly in the Northeast, have been experiencing declining daily attendance and handle, and that these declines cannot possibly be caused by OTB. Nevertheless, New York track owners believe that OTB has aggravated their financial problems and that OTB payments are insufficient compensation. And they believe it is unfair for a government to establish itself in competition with a private industry while at the same time using the product supplied by that industry—in this case horseraces.

Table 5-41 shows a net gain in horsemen's purses in 1975 over 1970 levels. Decreases in average daily attendance and handle at New York tracks resulted in theoretical on-track losses to horsemen of \$4.8 million in 1975 over 1970. But contributions from OTB to horsemen of \$13.9 million in 1975 resulted in a net gain to horsemen that year of \$9.1 million more than in 1970. OTB spokesmen cite these figures as proof that OTB has helped horsemen. But because horsemen believe that average daily attendance and handle at the New York tracks would have increased each year rather than decreased if OTB had never been established, they believe that the increase in horsemen's purses would have been even more significant without OTB.

Since it is impossible to determine how New York tracks and horsemen would have fared if OTB had never been introduced, arguments such as the above—based purely on conjecture—cannot be conclusive. It is possible that, without OTB, track attendance and handle would have continued to increase after 1970, but they also could have remained about the same or decreased. In any event, operating under government auspices and for "public benefit" (i.e., public revenue and competition with illegal bookmakers), the OTB phenomenon is growing. OTB now covers most of New York State and has recently

TABLE 5-40.—TRACK NET LOSSES FROM ALL CAUSES, 1975 COMPARED WITH 1970\*

	(In millions)
Track losses resulting from decreases in average daily handles and attendance 1975 over 1970	
New York Racing Association tracks	
Attendance <sup>1</sup>	\$ 9.0
Handle <sup>2</sup>	6.1
Subtotal	\$15.1
New York metropolitan harness tracks	
Attendance <sup>3</sup>	\$ 3.6
Handle <sup>4</sup>	1.3
Subtotal	\$ 4.9
Total flat and harness losses	\$20.0
OTB contributions to tracks in 1975**	
To flat tracks	\$ 8.0
To harness tracks	5.9
Total	\$13.9
Net loss to tracks	\$ 6.1***

\*1970 base year for flat tracks; 1971 base year for harness tracks.  
\*\*Represents 50 percent of OTB distribution to tracks; remaining 50 percent is earmarked for purses.  
\*\*\*These figures do not take into account the effects of inflation.  
<sup>1</sup> 27% decrease × 28,100 × \$4.50 per capita × 263 days.  
<sup>2</sup> 14% decrease × \$3,174,100 × 5.2% share × 263 days.  
<sup>3</sup> 20% decrease × 19,600 × \$3 per capita × 309 days.  
<sup>4</sup> 4% decrease × \$2,056,200 × 5% share × 309 days.

TABLE 5-41.—NET GAIN IN HORSEMEN'S PURSES, 1975 COMPARED WITH 1970

	(In millions)
Horsemen's share of OTB handle in 1975	\$13.9
Horsemen's share of on-track losses resulting from decreases in average daily handle and attendance 1975 over 1970	
New York Racing Association tracks	
3.3% share × 14% decrease in handle	
× \$3,174,100 × 263 days	3.8
New York Metropolitan Harness tracks	
3.8% share × 4% decrease in handle	
× \$2,056,200 × 309 days	1.0
Total	\$ 4.8
Net gain to horsemen:	\$ 9.1

NOTE: These figures do not take into account the effects of inflation.

spread into Connecticut. OTB opponents currently are concentrating their efforts in a battle against interstate <sup>45</sup> OTB, which they perceive as an enemy powerful enough to bankrupt all but the largest racetracks offering the richest purses.

## Interstate OTB

Interstate off-track betting is not a new concept. Nevada bookmakers have been licensed since 1949 to take bets on races run anywhere in the country. Illegal bookmakers have been in business on an interstate basis much longer. But interstate parimutuel wagering has only come about since the establishment of New York OTB.

The New York OTB statute contains a provision enabling OTB offices in New York to take bets on out-of-State races under the following condition: that bets may only be accepted when there is no racing of that type (thoroughbred, harness, or quarter horse) in New York State, with the exception of a maximum of five thoroughbred and five standardbred races a year which are considered special events (such as the Preakness, the Colonial Cup, and the D.C. International).<sup>46</sup> In accordance with these provisions, New York OTB has accepted wagers on races run in Maryland, Florida, Pennsylvania, South Carolina, and Delaware. The law contains provisions for the compensation of New York tracks (and horsemen) when OTB accepts wagers on out-of-State races. OTB also enters into contracts to compensate the out-of-State tracks supplying the races, but New York law imposes a limit on the percentage of OTB handle that the out-of-State tracks can receive. Opponents of interstate OTB believe that the New York policy unfairly reduces the commercial bargaining power of out-of-State tracks.

Disagreement has also arisen regarding the Kentucky Derby. When Churchill Downs declined to negotiate with OTB, OTB officials decided to accept wagers on the Derby without the track's permission, claiming that the nature and popularity of this event place it in the "public domain." The money that would have gone to Churchill Downs—\$127,000 in 1975—was paid to New York tracks. From 1972 to 1975, out-of-State racing industries received a total of \$5,014,470 from New York City OTB (table 5-42).

Connecticut is the most recent State to establish

TABLE 5-42.—PAYMENTS BY NEW YORK CITY OFF-TRACK BETTING TO NEW YORK AND OUT-OF-STATE TRACKS FROM INTERSTATE WAGERING POOLS, 1972-1975

Year	Payments to:	
	Out-of-State tracks	New York tracks
1972	\$ 783,333	—
1973	945,277	—
1974	1,335,799	\$1,175,000
1975	1,948,536	1,436,000*
Total 4 years	\$5,012,945	\$2,611,000

\*Includes \$127,000 that was paid to New York tracks on the Kentucky Derby.

interstate off-track wagering. As noted earlier, Connecticut OTB uses New York horseraces exclusively. Its contract with the New York Racing Association is subject to approval by the New York Racing and Wagering Board. The OTB system itself is operated by a private computer firm. The Connecticut OTB operation is unique in the United States in that it is the only gambling operation to rely completely on a product borrowed from another State. Similar arrangements do exist, however, in other countries. When fully operational, the Connecticut system will offer betting parlors and telephone service similar to that provided in New York, as well as "minitheaters" designed to simulate the racetrack atmosphere by enabling patrons to bet on televised races.

Since Connecticut has no horseracing within its borders, its off-track betting system cannot affect any present in-State racing concerns. (Whether Connecticut OTB may adversely affect racing in Massachusetts or Rhode Island has been the subject of debate, however.) In New York, horseracing preceded OTB, but in Connecticut, OTB will be the vested interest when horseracing is introduced. The Connecticut Commission on Special Revenue has granted racetrack licenses to two private organizations, but construction cannot begin until the licensees have satisfied the various environmental, financial, and other contingencies required by the license.

The controversy surrounding interstate off-track betting has spread beyond the borders of New York and Connecticut. Owners of small- and medium-sized racetracks around the Nation fear that interstate OTB parlors would put them out of business by offering racetrack patrons the opportunity to bet on higher quality races run elsewhere. The expansion of interstate OTB, they claim, would drastically decrease track attendance, reducing the number of tracks to a few televised centers. As more tracks close, they say, the number of racehorses would decline drastically and thousands of workers—trainers, farm and backstretch personnel, and suppliers of goods and services—would lose their jobs. The racing industry believes that the only effective weapon against interstate off-track betting is a Federal law banning the practice entirely.<sup>47</sup> The current system, in which the relevant State racing commissions must approve interstate racing compacts, is unacceptable to the industry because it fails to protect the interests of the "third State"—a State whose racing may be harmed when its neighbor begins accepting interstate wagers.

From a State's point of view, the concept of interstate off-track betting appears to offer large new sources of revenue as well as the potential for driving illegal bookmakers out of business. It was those two incentives that prompted Connecticut to legalize OTB and the legislatures of several other States to study the matter. Proponents of OTB also believe it has the potential for substantially increasing horsemen's purses. And finally, say its advocates, interstate off-track betting can develop renewed public interest in racing by providing wider television coverage of racing than now exists and by encouraging breeders and owners to spend the time and money needed to produce racehorses of superior quality.

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## OTB AND ILLEGAL BOOKMAKING

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While there is no question that New York OTB is generating revenue for State and city governments, there is some question whether it is achieving the second of its two principal objectives—"to prevent and curb unlawful bookmaking and illegal wagering on horseraces."

In testimony before the National Gambling Commission, Paul R. Screvane, president of New York City OTB, quoted a statement by New York City Police Commissioner Michael J. Codd that "numerous small bookmakers, the handbooks specializing in horserace action, have had their business seriously disrupted by OTB. Some of these handbooks are in fact no longer in business." Screvane (and Codd) noted that horse books have a much smaller volume of business than sports books and that OTB is less effective against large-scale bookmaking operations, since such operations are able to take bets on team sports and offer tax-free winnings. Commissioner Codd's statement further noted that the New York City Police Department has "no evidence" that bookmakers make extensive use of OTB to layoff bets, as some OTB critics have charged. OTB corporations believe that their current computer-based and manual control systems help prevent the use of OTB for illegal layoff purposes. Sufficient evidence is not available at this time to resolve this issue.

While not distinguishing between small- and large-scale bookmaking operations, data gathered by the Gambling Commission indicate that during the period in which OTB has been in operation, there has been a net increase in illegal bookmaking in New York City. The Commission's survey of American gambling behavior and attitudes (see chapter 4) included a set of questions designed to determine the net impact of OTB on bookmaking in New York City.

One-third of the 864,000 residents of metropolitan New York who bet with OTB in 1974 said they had bet with bookies before OTB went into operation, which means that OTB has tapped a large market of clients with no prior illegal horse-betting experience. Among these clients were a projected 69,000 people who stated that they had begun wagering with illegal bookies since the introduction of OTB. On the other hand, a projected 67,000 OTB patrons—all bookie bettors before the advent of OTB—said they did not bet with bookies in 1974. This amounts to a net gain to illegal operations of about 2,000

people. It should be noted that these projections are based on a very small number of interviews and thus can be construed only as suggestive of a certain pattern of betting activity. And although there appears to have been a small net increase in illegal bookmaking operations in New York, it cannot be determined on the basis of available data whether OTB bears any significant responsibility for that increase. The figures do not indicate, for example, how many of the 69,000 people who began wagering with illegal bookmakers after first having bet with OTB would have started betting illegally even without the existence of OTB.

Even if OTB has been a factor in the apparent increase in illegal bookmaking, it alone cannot be blamed for that increase. At least three other factors—in addition to their ability to offer credit, tax-free winnings, and other attractions—give bookmakers a competitive advantage over OTB. In order to reduce police corruption, the New York City Police Department since 1971 has stopped arresting lower echelon illegal gamblers. Because bookmakers pay much less protection money to police, the cost of their operation has decreased, allowing more of them to operate profitably and stay in business. With more bookmakers on the street and operating virtually in the open, customers may find the illegal operators even more accessible and convenient than local OTB parlors. Another factor is that most bookmakers also take sports bets, while OTB can only accept wagers on horseraces. This makes bookmakers more convenient to people who want to wager both on horses and on sports. Finally, the OTB surcharge on winnings has undoubtedly driven some OTB customers to illegal bookmakers, including at least some people who had begun to use OTB instead of their bookmakers before the surcharge was imposed. Although additional research is needed to determine conclusively the relationship between OTB and illegal bookmaking, data obtained thus far do not support any assumptions that OTB has decreased participation in illegal wagering or cut into the profits of bookmakers and organized crime. It should be kept in mind that, as discussed elsewhere in this Report, other legal gambling industries that have tried to compete with their illegal counterparts have been unsuccessful in that regard.

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## GAMBLING SURVEY RESULTS

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Additional findings of the National Gambling Commission's survey are summarized below.

1. OTB Bettors (table 5-43). Nearly 14 percent of the adult population of New York City placed a legal OTB bet in 1974. The average annual wager per bettor was \$1,118.

OTB is a slightly regressive form of gambling—that is,

people in the lower income brackets spend proportionately more of their income on it than those in the higher brackets. But, overall, OTB is less regressive than most other forms of gambling, including horse tracks and illegal horse books. Participation in OTB increases as income increases. But although there were proportionately fewer OTB bettors among low-income people, the average

bettor earning under \$10,000 wagered more than 15 percent of his annual income on OTB. High-income people wagered more heavily with OTB than did middle-income people.

2. Attitudes Toward Legalization (table 5-44). In the Nation as a whole, 38 percent of the people interviewed favored legalization and 51 percent opposed it. Less than half of those who said they favored legal OTB said they would patronize it.

Almost half the people who bet with illegal bookies in 1974 said they would use OTB if certain desirable features such as credit, telephone service, and tax-free winnings were added. Only 12 percent said they would not use OTB under any circumstances.

TABLE 5-43.—OTB AND FAMILY INCOME

	\$0 to 10,000	Family income			Total sample
		\$10,000- 15,000	\$15,000- 20,000	Over 20,000	
Percent who bet	9.9	14.8	21.2	27.3	13.5
Average annual bet per bettor	\$1,595	\$354	\$743	\$1,412	\$1,118
Average annual bet per capita	\$ 158	\$ 52	\$158	\$ 385	\$ 151
Average annual takeout per capita (takeout rate = 21%)	\$33.16	\$ 11	\$33.09	\$80.15	\$31.71
Percent of income:					
Bet per capita	2.17	0.21	0.38	1.92	0.57
Taken out per capita	0.455	0.072	0.079	0.081	0.114

TABLE 5-44.—ATTITUDES TOWARD LEGALIZATION OF OTB

	Percent		
	Total sample	New York OTB	States where OTB is not legal
Positive to legalization	38	42	29
Negative to legalization	51	47	61
Unsure	5	6	4
No answer	6	5	6
Willingness to bet with OTB			
Would bet	14	—	—
Would not bet	73	—	—
Don't know	2	—	—
No answer	11	—	—
Willingness to use OTB instead of bookies	1974 Bookie bettors		
Would use instead of bookie if available		55	
Would use instead of bookie if available and desirable features added		33	
Would not use instead of bookie		12	

3. OTB Operation and Regulations (table 5-45). The majority of those interviewed stated that they would prefer State or local, rather than Federal, regulation of OTB. A majority said OTB should be operated by people in private business rather than by government employees.

4. Necessary Features (table 5-46). Those who bet with bookies in 1974 were asked what features OTB would have to include before they would bet with OTB instead of a bookie. The most frequently mentioned feature was tax-free winnings. One-fifth of the bettors said credit was desirable but only 4 percent said it was necessary. Twenty-two percent said that telephone service was necessary.

5. OTB Surtax (table 5-47). New Yorkers were asked if they knew about the OTB surtax. Two-thirds of the OTB bettors knew about the tax, most of whom said they would use OTB more if the tax were repealed.

6. OTB and Track Attendance. New Yorkers, despite the presence of OTB, still go to the track more frequently than would be suggested by other characteristics—age, income, religion, race, etc.—which appear to explain betting at the track in other areas of the country. Not only do they go to the track more frequently, they also bet more when they go. A substantial majority of OTB patrons (63 percent) also go to the track, do so more often (23 days per year), and bet more heavily (\$73 per day) than track bettors nationwide. These results cannot be construed as a positive demonstration that OTB has had no negative influence on track attendance and handle.

TABLE 5-45.—OPERATION AND REGULATION OF OTB IF IT BECOMES LEGAL

	Percent
Should be operated by:	
Government employees	30
Private businessmen	55
Nonresponsive answers	15
Should be regulated by:	
Federal Government	18
State government	42
Local government	37
Don't care	3

TABLE 5-46.—FEATURES NECESSARY AND DESIRABLE IN A LEGAL OTB SYSTEM

Features	1974 Bookie bettors (percent)	
	Desirable OTB features	Necessary OTB features
Telephone service	0	22
Credit	19	4
Flexible settlement dates	0	4
Payoff as good as bookies	9	9
No income taxes on winnings	64	42
No features absolutely necessary		9

For example, the survey does not indicate whether the OTB patrons who also go to the track would go more often than 23 times a year if OTB did not exist. Nor does it indicate whether these people would bet more than \$73 each time they attended if there were no off-track betting. But neither do the results support the hypothesis that OTB decreases track attendance and handle.

In summary, it is apparent that off-track betting in New York has not been a complete success from all points of view. Other States contemplating the establishment of off-track wagering, however, are not bound to the New York model. The recommendations that follow attempt to confront some of the problems of New York OTB and to offer alternatives. The Commission reminds those States considering OTB that, in addition to establishing policy objectives such as revenue or crime control, they must also realistically consider the unique geographic, demographic, cultural, and socioeconomic factors which necessarily influence the success or failure of any legal gambling enterprise.

TABLE 5-47.—KNOWLEDGE OF OTB SURTAX

	Percent			
	Total New York sample	1974 OTB bettors	Former OTB bettors	1974 New York bookie bettors
Is there an extra tax on OTB?				
Yes	39	66	78	31
No	8			18
Don't know	36			51
No answer	17			0
	100			100
Would you use OTB more if there were no tax?				
Yes	35	54	0	71
No	62			29
Don't know	3			0
No answer	0			0
	100			100

## CONCLUSIONS AND RECOMMENDATIONS

Off-track parimutuel wagering has become the subject of heated controversy between State governments and the racing industry. The battle is waged on two fronts: interstate and intrastate. The horseracing industry has united behind an effort to have the Federal Government prohibit all interstate off-track parimutuel wagering. Such unity does not exist, however, on the issue of intrastate OTB. Some track owners and horsemen, while opposing the New York OTB model, would favor the adoption of an intrastate OTB designed to give the racing industry greater control over OTB operations. Other track owners and horsemen would not oppose a government-operated OTB system provided it avoided direct competition with tracks for the same betting market.

### Interstate OTB

Most efforts against parimutuel off-track wagering have centered on interstate OTB; a bill now before the 94th Congress—H.R. 14071—would prohibit all interstate off-track parimutuel wagering “to protect and further the horseracing industry in the United States.” **The Commission recommends that Congress not pass H.R. 14071.** To do so would violate what the Commission believes to be the appropriate national policy toward gambling: That unless there is evidence of a national interest or of interference by one State with the gambling policies of another, each State should have the primary responsibility for determining what forms of gambling may legally take place within its borders.

In accordance with the general position, **the Commission recommends that interstate OTB be prohibited only in States which have themselves taken**

**legislative action against it.** In one State, the action may take the form of making all betting a criminal offense; in another, intrastate OTB may be allowed but interstate OTB prohibited. Passage and enactment of H.R. 14071, the Commission believes, would be an unwarranted intrusion by the Federal Government into an area of regulation better left to the States. The Commission further finds no convincing evidence that “off-track parimutuel wagering on an interstate basis will result in a severe decrease in the number of racetracks” or that “interstate off-track parimutuel wagering greatly increases the availability of prerace and postrace information which would otherwise be unobtainable by illegal wagering operation [leading] to an increase in illegal wagering,” as claimed in H.R. 14071. The argument that the number of racetracks will severely decrease is speculative; even if it were true, the Commission finds no apparent national interest in the continued existence of racetracks that are economically unable to compete in the marketplace with other forms of legal wagering. In addition, illegal interstate bookmaking operations are currently able to receive all necessary prerace and postrace information; the Commission believes the existence of interstate OTB would not materially improve that capability.

Nevertheless, Congress itself may determine that the need to further assist and protect the horseracing industry by the blanket prohibition of interstate off-track parimutuel wagering constitutes a national interest, or that interstate OTB legislation is needed to prevent the interference by one State with the gambling policies of another. If so, the Commission advises the passage of a bill that would prohibit interstate parimutuel off-track wagering except when pursuant to an agreement between the racing commissions of the State in which a horserace

takes place and the State taking bets on that race. Such a bill would avoid the possibility of one State's "pirating" the races of another State, but would permit interstate off-track parimutuel wagering when it is mutually beneficial to the two States involved.

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## Intrastate OTB

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As noted earlier, intrastate OTB presents different kinds of policy issues. Diverse formats may be followed by States establishing OTB. Consistent with its national policy on gambling, the Commission takes no position on the advisability of any State's instituting intrastate parimutuel off-track wagering. The Commission recognizes that State policies in this area, as in all other areas of gambling policy, will vary because of the different cultural, social, economic, and political circumstances prevailing in each State. Permitting OTB may be an appropriate public policy for one State, yet inappropriate for another.

The only State currently conducting intrastate off-track parimutuel wagering is New York. Much opposition to New York's intrastate OTB has arisen among members of the racing industry in New York who claim that it has hurt New York's racing industry. Others in the racing industry fear that a New York-style intrastate off-track parimutuel wagering system may be instituted elsewhere; their resistance springs from New York's utilization of OTB primarily as a State and local revenue measure, and only secondarily as an aid to racing. The practical result of this policy has been that most of the controversies between the racing industry and the government-operated OTB corporations have been resolved in ways that favor OTB.

The New York model represents only one of many possible courses that could be taken by a State establishing an intrastate off-track parimutuel wagering system. An arrangement whereby OTB parlors are regulated by the State and operated by the tracks, as is done in France and Japan, is the system most often proposed by members of the racing industry who favor intrastate OTB. Suggestions have also been made that OTB can best be operated by parties who are affiliated with neither the State nor the tracks.

The Commission believes that States which decide to institute intrastate OTB will find their best model in a nonprofit, government-controlled corporation. The advantages of such an operation are twofold. First, since any OTB operative, in the course of doing business, must necessarily make policy judgments that are to some degree political (such as the types of bets to be accepted and the amount of credit that may be extended), governmental control is therefore most appropriate; second, if the State, rather than a private party, becomes the OTB entrepreneur, an unnecessary partner will be eliminated from the distribution of revenues.

Parimutuel off-track wagering systems can be designed to provide reasonable revenues to the State, to allow persons unable to get to a racetrack to place a bet, and to maintain and further assist existing racing industries. These

are reasonable goals for an OTB system, and prospective OTB States are capable of striking the proper balance among them. To assist States considering the institution of intrastate OTB, the Commission suggests that they utilize a model statute it has formulated (see the appendix to this Report) through which an off-track parimutuel wagering system could be implemented. This statute includes stringent financial disclosure requirements and conflict of interest provisions. Because the Commission believes that any OTB State should coordinate that activity with its other gambling activities, the model statute would establish an umbrella organization to oversee all areas of State regulatory involvement in gambling activities.

The model provided in the appendix specifies no set distribution formula to govern the proportion of monies to be divided among the State, horsemen, and tracks. As general guidelines, however, a State considering the institution of intrastate parimutuel off-track wagering should note that the takeout and distribution structure adopted in New York does not effectively accomplish the goals of aiding both government and industry. In addition, since experience in New York has shown that a decrease in daily track attendance will occur during the initial OTB period, a State should take a smaller percentage of wagering revenues during the inaugural 24 to 36 months of off-track parimutuel wagering to compensate the track and/or horsemen for the initial loss of revenue sustained during that period. The actual length of time for the smaller percentage of takeout by the State, and the calculation of that percentage, depend upon the existing financial structure of the racing industries in each State. The Commission feels that in order for an intrastate parimutuel off-track wagering system to benefit the racing industry, the total share of revenue accruing to the State should be kept under its maximum theoretical takeout, since the final takeout under such a system—as in New York—represents costs to the racing industry as a whole. **In order to achieve an effective limit on government taxation, a situation where State and local governments separately partake of the parimutuel revenue pool should be avoided.**

The Commission does not believe that the extension of current State gambling policies to the OTB arena will provide illegal gamblers with significant legal competition. The Commission supports the concept of the use of legal gambling as a tool against organized criminal activity. But a parimutuel off-track wagering system supported or operated by the State will not be able to compete effectively with illegal bookmakers if it subjects winnings received from legal OTB to taxation. As discussed earlier in this Report, winners in illegal gambling activities do not declare the income they receive. The Commission believes that a State should not tax legal OTB winnings if it intends legal parimutuel off-track wagering to be a tool against organized crime.

The Commission opposes State policies that would—however inadvertently—enlarge the betting market available to illegal bookmakers. For this reason, **the Commission recommends that advertising of legal**



parimutuel off-track wagering be confined to informing the public of the availability of the service and not be aimed at creating a greater demand for OTB. Public relations campaigns promoting OTB have been undertaken in New York; a survey conducted for the Commission demonstrated that, although legal parimutuel off-track wagering attracts a good number of previous illegal bettors, a significant number of New Yorkers began betting with illegal bookmakers after becoming acquainted with off-track betting through legal State or local outlets.

The implications of that finding are disturbing, and have been acknowledged by the National Association of Off-Track Betting (NAOTB), which is studying the problem of self-regulation of advertising through the formation of an advertising code of ethics. Because the proposed code is not yet completed, the Commission is unable to determine its potential effectiveness, but States considering the establishment of intrastate OTB should examine the NAOTB code of ethics when it appears to determine whether it can help protect government from becoming involved in the active promotion of gambling.

One important marketing decision facing a prospective OTB entrepreneur is the location of betting parlors. If OTB shops are placed near existing tracks, they will necessarily compete for bettors with the tracks. If they are placed in areas remote from the tracks, the State may be placed in the position of promoting parimutuel off-track wagering among citizens who had not previously participated in that activity. In the first instance, the State may arrange with the racing industry for a mutually acceptable schedule of compensation. In the second case,

the Commission recommends that States considering establishing OTB parlors in areas remote from tracks fully investigate the parlors' potential effect upon the new betting clientele that may be created thereby and the number of those new bettors who may later bet with illegal bookmakers before creating such OTB parlors.

It should be emphasized that no OTB operation or racing regulatory agency that is underfinanced and understaffed can properly do its job. **The Commission strongly urges States to provide a level of funding to off- and on-track regulating agencies that will enable them adequately to police and supervise those activities.** An off-track parimutuel wagering system that functions perfectly well on paper will not serve the people of the State or the racing industry if it is not supported by the State legislature.

The Commission's opposition to the proposed prohibition of interstate parimutuel off-track wagering is based on its general philosophy as expressed in the national policy toward gambling, even though it recognizes that its recommendations concerning interstate and intrastate parimutuel off-track wagering may be somewhat unpopular among certain elements of the racing industry and the public. Legal intrastate OTB is neither recommended nor disapproved by the Commission. The States themselves will make the policy decision concerning the institution of off-track betting. In these areas, as in others in the gambling field, the Commission leaves determination of gambling policies to the States, hoping that the various systems of OTB discussed above will help them in doing so.



# LOTTERIES

## INTRODUCTION

State-operated lotteries are conducted in 13 States which stretch from Maine in the North to Illinois in the West and Maryland in the South, with the exceptions of Vermont and Indiana. These States account for approximately 40 percent of the Nation's population. Raffles are legal to some extent in 21 States. In the other 29 States they are totally prohibited, either by a specific statute outlawing raffles or defining them as illegal lotteries (see table 5-48).

State-operated lotteries, a comparatively recent development in legal gambling, are the third most widely available form of gambling—after bingo and parimutuel wagering. Approximately 70,000 sales outlets make State-conducted lotteries the most accessible form of gambling to the public in those States.

Since the reintroduction of legal lotteries in 1964, lottery commissions have striven to promote lottery games that will appeal to the demands of the gambling public in their States. Expensive tickets and lack of action plagued both the original New Hampshire Sweepstakes in 1964 and the New York Lottery in 1967: Revenues for both lotteries were much lower than had been anticipated. In contrast, the New Jersey 50¢ weekly game, introduced in 1971, proved enormously successful because of its affordable tickets and quick results. Lotteries are viewed by their participants as a passive form of gambling that is free from corruption and generates substantial revenues for government. To increase participant involvement, State lotteries frequently market lottery games that feature faster action and a greater degree of participation by ticket purchasers; the games have enjoyed significant

increases in ticket sales. The instant lottery game, introduced in Massachusetts in 1974, has proven to be the most innovative and lucrative game the lotteries have yet marketed. Gross lottery sales increased by 45 percent in 1975 over the previous year, and most of the increase must be attributed to the phenomenal success of the instant games.

Another innovation in the legal lottery industry designed to provide purchasers with a greater sense of participation is the daily numbers game introduced by New Jersey in May 1975 and in Rhode Island and Massachusetts in 1976. State lotteries had demonstrated an ability to attract great volumes of money through their limited-action, nonparticipatory lottery games, but the introduction of the daily numbers game in New Jersey may also be viewed as the first legal game established specifically to combat an ongoing illegal operation.

Since the introduction of the original New Hampshire Sweepstakes in 1964, the State lotteries have systematically increased public awareness and participation in this passive form of legal gambling through their ability first to identify their market, and second, to produce and advertise a diverse line of games in order to cater to the particular desires of different segments of the population within their States. This chapter examines the various aspects of lotteries and raffles, their history and development, the organizational structure and operations of the State lotteries, the revenue produced and the potential for increased earnings, and the issues that confront the industry now as well as in the future.

## HISTORY AND DEVELOPMENT

A lottery is a form of gambling in which chances to share in a distribution of prizes are sold.<sup>48</sup> The three essential elements of a lottery or a raffle are an investment by the player, chance, and a prize. Raffles tend to differ from lotteries only in the manner in which prizes are awarded. The former also generally offer goods rather than cash awards, are smaller in scope, and are more often conducted by churches and other charitable organizations.

Evidence of the application of lotteries and raffles for the purpose of raising needed capital for use in the United States can be found as early as the financing of the original English settlement at Jamestown by the Virginia Company in London.<sup>49</sup>

During the colonial period, groups of citizens petitioned their legislatures for permission to engage in a lottery to finance local needs. State legislatures, unwilling to levy

new taxes, granted licenses and established rules for the lottery.<sup>50</sup>

Lotteries were most active during the period following the adoption of the Constitution in 1789 and prior to the establishment of effective means of local taxation and the wave of antilottery reform in the 1830's. The ever-expanding size and population of the Nation required great sums of development capital to finance public works, churches, schools, and universities.<sup>51</sup> Local operations were replaced by statewide and national schemes. This evolution created new conditions and greater problems.<sup>52</sup>

As more and more lotteries were authorized by State legislatures to raise larger and larger sums of money, two significant problems developed that were to cause the demise of the lottery as an instrument of public fiscal

policy: (1) increased competition in each of the States due to the number of local and out-of-State lotteries, resulting in capital shortfalls and defaults by lottery managers; and (2) the development of a group of commercial middlemen, the ticket broker and the lottery contractor, who expanded the scope of market areas to

national proportions. Brokers purchased tickets at a discount from the operating entrepreneur and resold them to the public at inflated prices. Lottery contractors were hired by the sponsors to operate the lotteries; these contractors hired ticket brokers to sell tickets.<sup>53</sup> Eventually, five or six national lottery companies dominated the

TABLE 5-48.—AUTHORIZED LOTTERIES AND RAFFLES

Lotteries				
1964-1971	1972	1973	1974	1975
New Hampshire New York New Jersey	Connecticut Massachusetts Michigan Pennsylvania	Maryland	Illinois Maine Ohio Rhode Island	Delaware Omaha, Neb.
Raffles				
State	Licensing authority	Fee	Qualified organizations*	
Alaska	St. Dept. of Revenue	\$10	charitable as defined in statute	
Colorado	Secretary of State	\$50	charitable as defined in statute	
Connecticut	Chief of Police, or First Selectman	\$5, \$10, \$15/day, \$35	charitable as defined in statute	
Iowa	St. Dept. of Revenue, city or town council, county bd. of spvrs.	\$10	charitable as defined in statute, fairs, and amusement parks	
Louisiana	local governing body		charitable as defined in statute	
Maine	Chief of State Police	\$5	charitable as defined in statute	
Maryland	County Sheriff, Chief of Police in Baltimore City	\$5	charitable as defined in statute	
Massachusetts	Com. of Public Safety, city or town clerk	\$10	charitable as defined in statute	
Montana	city or town council, or county commission		profit or nonprofit organizations	
Nebraska	State legislature may authorize and regulate, no permit necessary		charitable as defined in statute	
New Hampshire	local governing body		charitable as defined in statute	
New Jersey	municipal clerk	\$5 or \$10	charitable as defined in statute	
New Mexico	no permit		fairs for charitable purposes	
Oklahoma	no permit		military posts, only voluntary contributions allowed, for community chest welfare funds	
Oregon	no permit		charitable as defined in statute	
Rhode Island	Chief of Police, Police Commissioner, town sergeant		charitable as defined in statute, only door prizes allowed	
South Dakota	State legislature authorization, notice to be given by operators to local governing body 30 days prior to event		charitable as defined in statute	
Vermont	no permit		charitable as defined in statute	
Virginia	local governing body		charitable as defined in statute	
Washington	State Gambling Com.	fixed by Commission	charitable as defined in statute	
Wyoming	no permit		charitable as defined in statute	

\*Denotes number of years organization must be established in order to be eligible for a license to conduct a raffle.

industry, which had become not so much a means of raising public revenue as a multimillion dollar business enterprise. The establishment of a number of the Nation's most prestigious banks and brokerage houses came as a result of the organizational structure and function of the lottery contractors in the early 19th century.<sup>54</sup> The First National City Bank of New York and Chase Manhattan Bank were founded by former lottery managers.<sup>55</sup> Between 1790 and 1860, 24 of the 33 States had financed internal improvements through lotteries, and an estimated \$32 million was raised.<sup>56</sup>

In spite of the merits of the system, the discovery of corruption and fraud among public officials and lottery contractors aroused a wave of public indignation against lotteries in the 1830's. Before the advent of the three-number combination system of lottery drawings, drawings could drag on for months at a time. Each ticket and its corresponding prize slip or blank were drawn individually or in small groups. On each day a certain number of tickets were drawn, which encouraged the practice of "insuring" particular numbers: A person could bet that a certain number would be drawn on a particular day, or that a particular number would win a prize or draw a blank according to a ratio of increasing odds as the drawing progressed. Measures enacted by the States to prohibit the practice of "insurance," or otherwise to guarantee the honesty of lottery operations, were ineffective.<sup>57</sup>

Organized opposition to the lotteries during the early 1800's was confined to the Society of Friends and a small number of newspapers. Most organized religions took no stand regarding the morality of lotteries; many, in fact, used lotteries and raffles to finance the construction of churches. The great majority of newspapers endorsed or ignored the use of lotteries and benefited from the advertising revenue supplied by the games.<sup>58</sup>

As more and more newspapers published accounts of corrupt lotteries and their deleterious effect on segments of the population least able to afford the purchase of tickets, lottery authorizations decreased or were abolished altogether in most northern States by 1840. The increasing incidence of profiteering by middlemen eventually incited public indignation in the South and West as well. By 1860, every State in the Nation except Delaware, Kentucky, and Missouri had enacted constitutional or statutory prohibitions against any and all lotteries.

The financial needs brought about by the Civil War and Reconstruction caused a revival of authorized lotteries in the South and West.<sup>59</sup> The national scope of these lotteries, their continued corruption, and the ineffectiveness of nonuniform State prohibitions demonstrated the need for corrective Federal legislation.

The legislative history of Federal antilottery statutes began in the 1860's. Before that time, lotteries were identified as a State matter, regulated and enforced at the State or local level.

The infamous Louisiana Lottery Company was chartered in 1868 for a period of 25 years.<sup>60</sup> At about that time, a number of bills were enacted by Congress to preclude the use of the mails to lotteries when it became apparent that

State laws lacked effectiveness in dealing with out-of-State lotteries. In spite of Federal antilottery laws enacted in 1864, 1868, 1872, and 1876, however, the Louisiana Lottery continued to expand. Its continuation could be attributed in part to the failure of enforcement officials to prosecute the lottery managers for flagrant violations of State and Federal laws.

From the time of its inception, the Louisiana Lottery controlled legislatures, newspapers, banks, and Governors and other officials. It successfully suppressed opposition through bribery, received nationwide support amounting to \$30,000 a day, and made profits as high as \$13 million a year.<sup>61</sup>

The lottery conducted several types of monthly drawings, with tickets ranging in price from \$2 to \$40. A special top prize offered \$600,000 to the winner. Total prize pools amounted to \$2 million per drawing and \$28 million per year. Its daily lottery offered a \$5,000 grand prize on tickets selling from 20¢ to \$1. The "policy" games associated with the daily lottery attracted the greatest levels of criticism due to aggressive promotion and their affordability to the local poor.<sup>62</sup>

National criticism grew as the Louisiana Lottery penetrated every State in the Union. Ninety-three percent of the lottery's gross revenue came from outside Louisiana. Reformers, labor and farm organizations, newspapers, and churches all pressed for remedial Federal action.<sup>63</sup>

Experience had shown that the 1876 Federal antilottery statute—enacted to exclude letters, circulars, and similar lottery materials from the mails—was too vague and had not been enforced. In 1890, a new provision was enacted that made the act of mailing lottery letters or circulars a continuous offense, triable by a court in any jurisdiction through which lottery material had been transported. The Louisiana Lottery had regularly paid off jurors within the State in order to avoid conviction for an unlawful lottery act. It was hoped the new provision would secure a fair trial in localities where the influence of the lottery was not established.

The 1890 antilottery statute banned all lottery materials from the mails; prohibited the sending of checks, drafts, or money orders for the purchase of tickets; and outlawed the mailing of lottery advertisements. For the first time, violations of law were made punishable by imprisonment. The law also prohibited the lottery from channeling its operations through an agent or representative, as the lottery had done with the New Orleans National Bank. Use of the mails was closed to newspapers that contained lottery advertisements and lists of prizes, and the penalty for mailing lottery materials or money by the public to the lottery company was extended to include the mailing of such materials by the company to the public.<sup>64</sup>

In 1895, Congress acted to authorize the Postmaster General to instruct postmasters to withhold delivery of lottery-related mail, and to deny any person acting as an agent of a lottery company the use of the mails.<sup>65</sup> Interstate transportation of lottery materials and the use of express mailing were also made illegal in 1895. These antilottery laws deprived the Louisiana operation of the methods by

which it had evaded State and Federal statutes. With its demise, State-authorized lotteries vanished from the American scene for the next 70 years.

In the 1930's—and continuing to some extent to the present—the United States was flooded with lottery materials and tickets from the Irish Sweepstakes as well as from lotteries based in Latin America and the Caribbean. Enforcement activity by the Post Office Department was not uniform, and many abuses of the antilottery statutes were overlooked. Many newspapers freely published lists of American prizewinners in the Irish Sweepstakes and continued to do so without penalty. (Today, according to lottery directors, Irish Sweepstake sales have drastically decreased in States where it competes with legal lotteries.)

Following the Nation's first congressional hearings concerning the activities of organized crime, Congress approved the Revenue Act of 1951. This act provided for an annual \$50 Occupational Tax Stamp to be purchased by all persons engaged in a gambling enterprise, and a 10 percent excise tax on the gross receipts accepted by an individual engaged in the wagering business. These provisions were incorporated into the Internal Revenue Code of 1954.<sup>66</sup> Enactment of the wagering tax statutes was not effected with lotteries in mind, but the applicability of the wagering excise tax against lotteries became an issue in 1964, when New Hampshire became the first State in the 20th century to authorize a lottery.

New Hampshire has an atypical tax structure—the State has no income tax or sales taxes, and relies instead on property taxes and on the imposition of excise taxes on alcohol, cigarettes, gasoline, etc. In April 1963, the Governor signed legislation authorizing the New Hampshire Sweepstakes Commission to conduct a lottery based on the results of an annual Sweepstakes Race. Most of the arguments presented in favor of the proposal stressed the necessity to provide additional revenue for the municipalities, specifically for education purposes.<sup>67</sup> The U.S. Department of Justice had assured the State that no violation of Federal law would be caused by the sale of Sweepstakes tickets to residents or nonresidents so long as interstate traffic was not involved.<sup>68</sup>

National attention was focused on the New Hampshire experiment, but its lower-than-anticipated revenue figures—perhaps caused by the expensive \$3 tickets and lack of action (annual, later semiannual Sweepstakes races)—and strong Federal laws against interstate lottery traffic discouraged other States from joining New Hampshire in the State-conducted lottery industry for another 3 years.

In 1964, the Internal Revenue Service ruled that New Hampshire had to pay the 10 percent wagering excise and that each vendor of Sweepstakes tickets had to have an Occupational Tax Stamp in order legally to sell tickets from the State lottery. The New Hampshire Sweepstakes Commission paid out over half a million dollars in 1964 in compliance with that ruling and purchased approximately 300 Occupational Tax Stamps for its State employees who sold the tickets at State-operated liquor stores.

In 1964, however, Congress—over the strong objection of the Secretary of the Treasury—acted to exempt State-conducted sweepstakes from the imposition of the wagering excise tax and the need to purchase the \$50 Occupational Tax Stamps.<sup>69</sup> Congress acted to exempt the New Hampshire Sweepstakes from the imposition of those taxing measures when it recognized that such imposition was an undue interference with a sovereign State's right to raise revenue. The IRS returned \$728,000 to the New Hampshire Sweepstakes Commission in 1965, but did not reimburse the Commission for the approximately \$30,000 it had paid for the purchase of the tax stamps in 1964 and 1965.<sup>70</sup>

New York followed with a State lottery in 1967, but once again revenues fell far short of the expectations of legislative proponents.

The revitalization of the modern State lottery came about in 1971 with the introduction of New Jersey's computer-based 50¢ weekly game. New Jersey also increased the size of the prize pool to 45 percent of the gross handle. New York and New Hampshire had allocated only 30 percent and 35 percent, respectively, to be returned to the public in the form of prizes. Frequent drawings, cheaper tickets, convenience of sale, and a weekly prize of \$50,000 all served to make New Jersey's innovative lottery more successful than its predecessors; it grossed \$142.5 million in its first year. The New Jersey model was adopted by New York and New Hampshire and by each of the other 10 States that presently conduct lotteries.

Despite the relative success of the State lotteries after the introduction of the 50¢ weekly game, their directors unanimously opposed the restrictions placed on their operations by the 19th century antilottery statutes. They maintained in hearings conducted by the National Gambling Commission that the antilottery statutes did not recognize the right of the States to conduct their lawful businesses and to raise revenue as they saw fit without undue Federal regulation or interference. They also contended that it was the intent of the antilottery statutes to prohibit privately owned and operated lotteries authorized by the States—not those lotteries operated by the States themselves. It was important that each State have the right to develop its own policy toward gambling and to employ its own methods to raise revenue without interference from the Federal Government.<sup>71</sup>

In September 1974, alleging that several States had rejected lotteries and that it was the responsibility of the U.S. Justice Department to enforce the policies enacted by Congress,<sup>72</sup> the Attorney General warned that unless remedial legislation were enacted by Congress within 90 days, it would be necessary to proceed against the offending States under 18 U.S.C. 1964.<sup>73</sup> This civil remedy provides for a method of permanently enjoining a "pattern of racketeering" involving violations of certain criminal statutes. (In May 1976, the Department of Justice moved under the same statute to enjoin the New Hampshire Sweepstakes Commission from engaging in alleged

interstate mailings of lottery tickets. That was the first time this statute has been used against a legal gambling entity.) On the last day of the 93d Congress, legislation was passed permitting the transportation, mailing, and broadcasting of advertising, information, and materials concerning a lottery conducted by a State on an intrastate basis. In

addition, 18 U.S.C. 1307 permits the broadcasting of lottery information by broadcasting stations licensed to a location in an adjacent lottery State, and exempts equipment and tickets used within a State in a State-conducted lottery from the ban on the interstate transportation of wagering paraphernalia.<sup>74</sup>

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## THE INDUSTRY TODAY

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### Organizational Structure

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All 13 State lotteries are operated and controlled by State governments. Though there are variations, the basic model for the operating structure of a State lottery consists of a commission appointed by the Governor, that establishes the rules and regulations of the lottery, determines the types of games to be conducted, and performs other advisory functions including the appointment of the executive director of the lottery. The executive director is responsible for the day-to-day functions and operations of the lottery and is assisted by deputy directors in charge of finance, marketing, computer operations, security, and other divisions of the lottery. Designated banks are used as depositories for lottery funds and distribute and collect lottery revenue and unsold tickets from their assigned sales agents each week. Lottery tickets are sold at retail outlets such as supermarkets, drugstores, and liquor stores. Forms indicating the disposition of each ticket are filled out by the sales agents and bank officers; they are collected each week from the banks by State employees and returned to the central lottery office with lottery receipts and unsold tickets. All unsold tickets in a given lottery pool must be in the possession of the State prior to the drawing of winning numbers for that particular lottery. If a sales agent is delinquent in settling with his assigned bank or indicates a lack of security, the bank will not issue him the next allotment of tickets; it then reports the agent to the director of the lottery.

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### Lottery Revenue and Distribution<sup>75</sup>

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The sale of State lottery tickets has become almost a billion-dollar industry. In calendar year 1975, gross lottery handle amounted to approximately \$992 million, an increase of 45 percent over the \$681 million wagered in 1974<sup>76</sup> (see table 5-49). It appears that the introduction of instant lottery games, daily numbers games, and the use of broadcast advertising has had a decidedly positive effect on State lottery sales, which had been steady for the previous 2 years. Whether the lottery-type games have reached their sales peak cannot be ascertained at this time,

but it is probable that the expanded use of instant and daily lotteries will perpetuate the upward surge of State lottery sales.

Each lottery State—with the exception of New Hampshire and New York—allocates approximately 45 percent of gross lottery revenue to winning ticket holders: New Hampshire allocates 50 percent, and New York a maximum of 40 percent. The 45-percent figure can be traced to the original New Jersey lottery, which allocated 45 percent to prize-winners—a percentage roughly equivalent to the payoffs in the illegal numbers game. Actual payoffs by the State lotteries vary by game and usually average two or three percentage points under the amount allocated due to some unclaimed prizes (see table 5-50). The percentage of gross lottery receipts allocated for the payment of prizes is the lowest of any form of commercial gambling conducted in the United States and smaller than many of the prize pools offered in the major European lotteries (see tables 5-50 and 5-51).

Although the minimum percentage of gross revenue to be returned to the State differs from State to State, most State lotteries contribute approximately 40 percent of gross sales to the State's general fund or to a specifically earmarked program. Net revenue to the State accounts for 1 percent to 2 percent of those State's annual tax collections, and these monies have supported many worthwhile purposes (see table 5-52).

The position of the State lotteries is that their profits do not constitute a form of taxation per se; rather, they should be characterized as returns from competition in the open marketplace for the leisuretime dollar. The purchase of their product is voluntary, and their profits accrue to the people of those States. In this context, it is noted that the States do engage in other forms of commercial enterprise, such as public transportation systems, tourist agencies, and retail liquor outlets. In any event, the distinction between "profits" and "taxes" appears to be academic; lotteries are relied upon by the States to generate revenues which would otherwise have to be produced by taxation, and the revenue they contribute to the States is indistinguishable from the monies raised by taxes. The State, by paying out a higher percentage of gross receipts to prizewinners, could continue to earn normal profits on invested capital with a smaller transfer of income from households to government through the lotteries.

TABLE 5-49.—STATE LOTTERY REVENUES AND DISTRIBUTION (figures in millions of dollars, years are fiscal years)

State	Distribution	1976	1975	1974	1973	1972	1971
CONNECTICUT	Gross	\$71.04	\$30.89	\$30.75	\$34.71	\$17.29*	
July-June	Prizes	32.82	13.89	13.84	15.62	7.78	
Feb. 1972	O. E.	8.45	2.21	2.21	2.59	1.59	
	Net	29.77	12.79	13.79	13.91	6.56	
DELAWARE	Gross	7.61					
July-June	Prizes	3.77					
Nov. 1975	O. E.						
	Net						
ILLINOIS	Gross	163.91	190.15				
July 1974	Prizes	73.76	85.53				
	O. E.	16.69	18.07				
	Net	73.46	87.28				
MAINE	Gross	8.26	5.20	0.32			
July-June	Prizes	3.70	2.20	—			
June 1974	O. E.	1.97	1.11	0.22			
	Net	2.58	1.20	0.08			
MARYLAND	Gross	59.77	38.67	35.16	6.30*		
July-June	Prizes	25.90	17.09	14.76	2.13		
May 1973	O. E.	7.97	4.49	3.64	2.04		
	Net	25.90	17.09	14.76	2.13		
MASSACHUSETTS	Gross	103.25	94.72	84.76	75.94	56.39*	
July-June	Prizes	47.89	42.62	42.60	34.10	25.50	
April 1972	O. E.	15.49	13.58	11.40	9.20	6.70	
	Net	39.87	38.52	35.20	32.60	24.20	
MICHIGAN**	Gross	227.24	135.82	137.38	83.07*		
July-June	Prizes	102.26	61.12	61.82	37.38		
Aug. 1972	O. E.	24.21	14.26	14.42	8.72		
	Net	100.77	60.44	61.14	36.97		
NEW HAMPSHIRE	Gross	14.13	11.12	5.67	6.85	7.70	4.28
July-June	Prizes	6.69	4.97	2.43	3.97	3.36	1.79
March 1964	O. E.	2.06	1.92	1.00	1.19	1.64	0.62
	Net	5.74	4.20	2.24	2.69	2.70	1.87
NEW JERSEY**	Gross		76.82	89.22	112.69	137.54	72.72
July-June	Prizes		36.72	40.24	50.71	61.89	32.72
Jan. 1971	O.E.						
	Net				56.69	69.00	33.36
NEW YORK	Gross		91.69	113.55	130.00	77.04	70.08
July-June	Prizes		36.68	45.42	52.00	30.81	27.64
June 1967	O. E.		13.75	17.03	19.50	11.56	10.51
	Net		41.26	51.10	58.50	34.67	31.93
OHIO	Gross	120.60	110.92	38.02*			
July-June	Prizes	54.27	49.92	17.11			
Aug. 1974	O. E.	18.09	15.97	5.77			
	Net	48.24	48.17	11.41			
PENNSYLVANIA	Gross	136.91	118.24	132.82	126.21	53.63*	
July-June	Prizes	60.96	51.36	55.73	54.40	23.97	
March 1972	O. E.	19.31	16.58	15.88	14.28	6.58	
	Net	56.64	50.29	61.22	57.52	23.07	
RHODE ISLAND	Gross	14.07	15.05	1.96*			
July-June	Prizes	6.44	7.53	0.88			
May 1974	O. E.	2.73	2.52	0.43			
	Net	4.90	5.00	0.66			

\*Indicates less than full year in operation.

\*\*Figures for Michigan and New Jersey are estimates.

TABLE 5-50.—STATE LOTTERY GAMES, ALLOCATION OF REVENUE

State		Prizes	O. E.	Net	Beneficiary
Connecticut	Weekly	45% min.	15%	40%	General Fund
	Overlay	N/A	N/A	N/A	
	Instant	45%	15%	40%	
	Numbers	N/A	N/A	N/A	
Delaware	Weekly	45% min.	15%	30%	General Fund
	Overlay	N/A	N/A	N/A	
	Instant	49.5-53.6%	11.5-15.6%	30%	
	Numbers	N/A	N/A	N/A	
Illinois	Weekly	45%	10%	45%	General Fund
	Overlay	45%	10.1%	44.9%	
	Instant	45%	10.5%	44.5%	
	Numbers	N/A	N/A	N/A	
Maine	Weekly	45% min.	23%	32%	General Fund
	Overlay	N/A	N/A	N/A	
	Instant	45% min.	23.8%	30.2%	
	Numbers	N/A	N/A	N/A	
Maryland	Weekly	42.5%	15%	42.5%	General Fund
	Overlay	N/A	N/A	N/A	
	Instant	45%	10%	45%	
	Numbers*	46%*	10%	44%*	
Massachusetts	Weekly	45% min.	15% max.	40%	Aid to cities and towns
	Overlay	45% min.	15% max.	40%	
	Instant	47-50%	15% max.	40%	
	Numbers	60%	15% max.	25%	
Michigan**	Weekly	45%			General Fund
	Overlay	45%			
	Instant	45%			
	Numbers	N/A	N/A	N/A	
New Hampshire	Weekly	50%			Aid to local education
	Overlay	N/A	N/A	N/A	
	Instant	50%			
	Numbers	N/A	N/A	N/A	
New Jersey		(Information not available.)			Aid to education
New York	Weekly	40% max.	15%	45% min.	Aid to education
	Overlay	40%	15%	45%	
	Instant	N/A	N/A	N/A	
	Numbers	N/A	N/A	N/A	
Ohio	Weekly	45%	15%	40%	General Fund
	Overlay	45%	15%	40%	
	Instant	45%	15%	40%	
	Numbers	N/A	N/A	N/A	
Pennsylvania	Weekly	45%	14%	41%	Property tax relief and public transportation for elderly
	Overlay	45%	14%	41%	
	Instant	45%	14%	41%	
	Numbers	N/A	N/A	N/A	
Rhode Island	Weekly	45.1%	18.5%	36.4%	General Fund
	Overlay	46.1%	24.1%	29.8%	
	Instant	45.3%	9.7%	45%	
	Numbers	48.4%	23.3%	28.3%	

\*Maryland pays out \$500 to every winner in its daily game; thus there is no set percentage for prizes or net to State. Figures represented here are the average totals from its first few weeks in operation.

\*\*Michigan's allocation of revenue for net to State and operating expenses for all their games are 44% and 11% respectively. No figures were furnished by Michigan for such allocations for the individual games.

TABLE 5-51.—MAJOR EUROPEAN LOTTERIES, ALLOCATION OF REVENUES

Lottery	Operator	Program	Government	Prizes	Agents	Advertising & O. E.	Beneficiaries
NATIONAL BRUSSELS (Bel.)	State	Aid for developing countries, charities	0%	59%	8%	1% 3%	foreign aid 26% charities 5%
ROYAL DAN. KLASSEN- LOTTERIE (Den.)	State	Government, 2 smaller lotteries —farmers —craftsmen	7.1% 15% tax on winnings	67.70%	13%	0% 2.5%	N/A
NATIONAL HELSINKI (Fin.)	Agency connected with Helsingfors ak Fiebank	Education 70% Nat. Opera 17% Fin. Theatre 13%	0% winners taxed	59.5%	4.5%	1% 1.5%	34.5%
NATIONAL PARIS (Fr.)	State	Government	22-25%	53-61%	12-15%	15% 3%	N/A
IRISH SWEEPSTAKES	Agency on behalf of State	Hospitals, government	6.25%	37.5%	16.67%	22.5% 1.25%	15.25% hospitals only
ITALY National	Concessionnaire on behalf of State	Charities, subject to change	nil	35%	13%	17% 7-11%	35%
ITALY National Lotto	State	Government	41%	47%	1%	12% 0%	N/A
NETH. National Lotto	Agency on behalf of State	Chosen by government	0% 25% tax on winnings over 1,000 guilders	42.3%	16.7%	5.1% 1%	36.9%
PORTUGAL National Lisbon	Nonprofit organization on behalf of State	Government 67% Charities 33%	20.5%	54%	12.7% + surcharge	2.5% 1.4%	10.3% charities only
SPAIN National Madrid	State	Government Red Cross	26%	70%	2-5%	1% 0.06%	Red Cross receives 26% of 1 lottery annually
SWEDEN National Stockholm	State	Government	Balance after prizes and expenses are paid—approx. 45%	49%	3%	3% 0.2%	N/A
SWITZ. Nat. Lotto Zurich	State	Chosen by Canton govts.	2% 30% tax on winnings over 50 SF	47.2%	9.7%	22.4% 7%	18.9%
SWITZ. Nat. Lotto Basel	Private, subject to oversight by Cantons	Chosen by 4 partners, subject to change	2% 30% tax on winnings over 50 SF	50%	10%	8-10% 5-6%	30%
W. GER. Nordrhein- Westfallen "Lotto"	Private, regulated by State	Causes chosen by govt.	16.67%	50%	7.5-9%	5.5% includes price of surcharge	23.5%

Source: Littlewoods Pools, Liverpool, England.



TABLE 5-52.—STATE LOTTERIES AS A SOURCE\* OF REVENUE (figures in millions of dollars)

State		1975	1974	1973
Connecticut	State tax collections	\$1,059	\$1,093	\$1,143
	Lottery net to State	12.79	13.79	13.91
	Percentage	1.21%	1.26%	1.22%
Delaware	Delaware lottery has not completed a full fiscal year.			
Illinois	State tax collections	4,410	Data not available	
	Lottery net to State	87.28		
	Percentage	1.98%		
Maine	State tax collections	369	Data not available	
	Lottery net to State	5.2		
	Percentage	1.41%		
Maryland	State tax collection	1,731	1,578	
	Lottery net to State	17.09	14.76	
	Percentage	0.99%	0.94%	
Massachusetts	State tax collections	2,219	2,205	2,054
	Lottery net to State	38.52	35.2	32.6
	Percentage	1.74%	1.60%	1.59%
Michigan	State tax collections		Data not available	
	Lottery net to State			
	Percentage			
New Hampshire	State tax collections	172	165	156
	Lottery net to State	4.2	2.24	2.59
	Percentage	2.44%	1.36%	1.66%
New Jersey	State tax collections	2,101	2,056	1,919
	Lottery net to State	36.13	46.39	56.69
	Percentage	1.72%	2.26%	2.95%
New York	State tax collections	8,939	8,516	8,170
	Lottery net to State	41.26	51.1	58.5
	Percentage	0.46%	0.6%	0.72%
Ohio	State tax collections	3,039	Data not available	
	Lottery net to State	41.26		
	Percentage	1.59%		
Pennsylvania	State tax collections	4,733	4,609	4,367
	Lottery net to State	50.29	61.22	57.52
	Percentage	1.06%	1.33%	1.32%
Rhode Island	State tax collections	350	Data not available	
	Lottery net to State	5.0		
	Percentage	1.43%		

\*State tax collection figures from "State Tax Collections in 1975," Bureau of the Census, U.S. Department of Commerce.

Operating expenses incurred by State lotteries account for approximately 10 to 15 percent of gross lottery revenue. This percentage includes the 5 to 8 percent paid by commissions to sales agents, and the usual 1 percent commission paid to banks used as depositories by the State lottery. Advertising expenditures account for 2.5 percent to 3 percent of lottery revenue, with the remaining revenue used to pay for lottery staff salaries, computer expenses, production costs, security, and other lottery expenses. Lottery commissions have contributed millions of dollars to State economies through payments to local businesses for services rendered, and have generated jobs for local citizens.

Since the introduction of lottery broadcast advertising in January 1975, advertising expenditures have risen slightly, but do not represent a higher proportion of lottery revenue due to the increased earnings of the lotteries in the past year.

## Promotion and the Product

State governments conduct lotteries with the express purpose of raising revenue. Effective competition with illegal organized gambling has not been provided by the traditional forms of State-operated lotteries, although this

is now being promoted through a daily numbers game in three of the lottery States. Thus, the principal function of a State lottery is to realize its maximum revenue potential, consistent with maintaining security and control, by creating and expanding its market of ticket purchasers while providing entertainment desired by the citizens of that State. Publicly financed State lottery advertisements are viewed by their critics as undignified and at variance with the proper aims of government, but advertising is seen by the lotteries as vital to increase sales levels and thereby to provide more revenue to the State.

Through the use of advertising, the public can be informed as to the lottery's price, prize structure, availability, and other features necessary to the successful promotion of the games. Most lottery advertisements accentuate the riches awaiting the ticket purchaser and mention the odds against collecting the higher prizes, but the lotteries generally fail to list the prize structure on the individual tickets. Thirteen States have become aggressive entrepreneurs of lotteries that, by their inherently passive nature, need to be constantly redesigned and promoted to catch and retain the public's attention in the competitive marketplace for disposable income. State lottery tickets are in the unique position of being the only consumer product that is widely advertised and backed by the prestige and integrity of State government.

Advertising expenditures by the lottery commissions average between 2.5 percent and 3 percent of gross lottery revenue, a relatively small figure compared to the size of advertising budgets in private industry. But whereas consumer products in the private sector must compete with similar rival goods and services for public consumption, State lotteries exist as monopolistic promoters of an activity that offers an average profit of 40 percent. In 1975, the 13 State lotteries spent approximately \$20 million to promote their various games. Since the signing into law of 18 U.S.C. 1307 in January 1975, prime-time television commercials on local stations have become a major avenue for the dissemination of lottery information. Several States—Connecticut, Illinois, Maryland, Massachusetts, Ohio, and Rhode Island—now conduct their weekly drawings on regularly scheduled television programs patterned after television game shows. State lottery advertisements also appear regularly in newspapers and on the major AM radio stations located in the lottery States.

The State lotteries believe that the introduction of broadcast advertising in 1975 has allowed them to communicate new lottery information and promotions more clearly and more quickly, and to advertise in a manner that leaves a greater impression on a prospective ticket purchaser. It is difficult to determine the impact broadcast advertising has had on lottery sales, however, due to the introduction of the instant lottery game in 10 of the 13 lottery States at virtually the same time.

The simplicity, availability, and turnover of the instant lottery has made it the most successful game yet marketed by the State lotteries (see table 5-53). For the price of \$1, the player participates in the game by scratching off the

covered portions of the ticket to expose a set of printed letters or numbers. Depending on the rules of the particular game and the numbers or letters exposed, the player can become a prizewinner without waiting for the results of a drawing. Most of the instant games also offer a continuity factor by enabling the purchaser to win a prize if he is able to collect the necessary letters or numbers contained on the ticket stub to spell a specified word or add up to a specified sum. The ease of participation and the greater ticket sales generated by the continuity factor and instant results have all contributed to the tremendous turnover the instant game has enjoyed since its introduction in Massachusetts in 1974.

The increased availability of the instant game in 1975 pushed annual lottery sales up by approximately 45 percent. As much as 80 percent of lottery sales in several States were for instant game tickets during their periods of promotion. The lotteries advertise that as many as one ticket in every five enables the purchaser to claim a prize; the vast majority of these prizes are awards of free tickets or small cash prizes. As in the weekly game, most States have allocated a minimum of 45 percent of the gross to be used for the payment of prizes. However, the chances of winning one of the top prizes available in the "stub" games are remote. The "stub" games have also been used in association with weekly and overlay lotteries as well. This extra chance to win a prize usually has resulted in increased ticket sales during their periods of promotion.

Despite a slump in sales during 1975, the weekly lottery remains the cornerstone of each of the 13 State lotteries. While the mechanics of the game have changed little since its introduction in 1971, prize structures for the game continue to change in response to the desires of the public. Although the instant lotteries offer the largest grand prizes, the weekly game still offers a prize structure that attracts patrons who appreciate its effortlessness of play and who have little interest in the participatory aspect of gambling.

Weekly tickets are all prenumbered, and there are generally a number of ways a ticket purchaser can claim a prize from the same ticket. The earlier weekly lotteries featured a five-digit or six-digit numbered ticket with which the purchaser could claim a prize if the number on his ticket matched the exact number drawn or portions thereof. Four-digit or five-digit matches would enable the purchaser to claim a prize in the \$200 to \$5,000 range, and a six-digit match entitled the person to collect the weekly lottery grand prize. The single number match, however, has been replaced in favor of a method of multiple number matches of two- or three-digit numbers. This method also enables the purchaser to collect the weekly grand prize if the two three-digit numbers drawn match those printed on his ticket, and insures a greater number of winners who need only to match two-digit or three-digit numbers in order to claim a prize. It appears that the lotteries have decided that a greater number of winners and a greater number of smaller prizes, together with a large grand prize, are more in line with the desires of the ticket-purchasing public than were the lotteries that

TABLE 5-53.—INSTANT LOTTERY SALES (figures in millions of dollars)

State	Gross	50¢ weekly game	\$1.00 instant game	Percentage of gross sales from instant games	
				For period indicated	For year
CONNECTICUT					
09/18/75-11/20/75	\$21.30	\$5.60	\$15.70	73.7	
02/19/76-05/06/76	31.05	6.80	24.25	78.1	
FY 1976 total	71.04	29.49	41.55		58.5
DELAWARE					
02/19/76-04/01/76	3.82	0.48	3.34	87.4	
FY 1976	7.61	2.88	4.73		62.2
ILLINOIS					
10/21/75-02/09/76	93.50	38.50	55.00	58.8	
FY 1976	163.91	65.27	56.61		34.5
MAINE					
FY 1976	8.26	2.73	5.49		66.5
MARYLAND					
02/10/76-03/31/76	26.23	6.23	20.00	76.2	
FY 1976	59.77	39.77	20.00		33.5
MASSACHUSETTS					
06/06/74-08/08/74	27.50	10.47	17.03	61.9	
02/04/75-07/24/75	45.73	22.59	23.14	50.6	
08/15/75-12/12/75	30.90	13.16	17.74	57.4	
FY 1976	103.25	46.36	47.36		45.9
MICHIGAN				Data not available	
FY 1976	227.24	65.46	154.66		
NEW HAMPSHIRE					
01/29/75-07/01/75	6.65	1.78	4.86	73.1	
07/01/75-02/01/76	7.21	2.75	4.45	61.7	
02/01/76-03/30/76	2.51	0.49	2.02	80.5	
03/30/76-04/30/76	2.40	0.40	2.00	83.5	
FY 1976	14.13	4.41	9.73		68.8
NEW JERSEY					
06/16/75-07/01/75	49.62	8.73	29.05	58.5	
11/17/75-03/31/75	86.25	23.49	37.49	43.5	
(FY 1976 figures not available.)					
NEW YORK					
(Began operation in September 1976; figures are not yet available.)					
OHIO					
FY 1976	120.60	66.78	14.47		12.0
PENNSYLVANIA					
06/04/75-09/24/75	51.33	15.83	35.50	69.2	
FY 1976	136.91	34.24	67.86		50.0
RHODE ISLAND					
FY 1976	14.07	6.99	1.75		12.4

## NOTES:

The percentages contained herein reflect only the dollar volume generated by the sale of instant lottery tickets and do not reflect the actual percentage of instant tickets sold within a lottery State in fiscal year 1976. As the instant tickets are twice as expensive as the weekly tickets, their percentage of the total sales in a State lottery would approximate 66 percent if a similar number of weekly 50-cent tickets were sold.

All comparative sales figures for those periods when instant tickets were promoted by a State lottery were received by the National Gambling Commission prior to July 1, 1976, and do not reflect every promotion of instant tickets by each of the lottery States. Their inclusion in the table above is to demonstrate their relative popularity in relation to the weekly games during their irregular periods of promotion. A number of States—Ohio, Rhode Island, and others—have rather small percentages of gross sales derived from the sale of instant tickets because the promotion of instant lottery tickets by their lottery commissions began only recently.

offered a number of medium-range prizes for four-digit and five-digit matches.

When the lottery has sold a sufficient number of tickets, the State conducts a grand-prize drawing which, depending on the size of the lottery, may range from \$100,000 to \$1 million. The larger prizes are paid off in weekly, monthly, or annual installments through a lottery-purchased annuity plus the cost of the original installment. A \$1 million prize paid out over a period of 20 years costs the State approximately \$550,000, depending upon the market price set by the seller of the annuity.

“Overlay” lotteries, which are waning in popularity as more States introduce instant lottery games, feature \$1 tickets and prize structures which often offer automobiles, vacations, and other goods in addition to cash prizes, and at one time were used in many of the lottery States as a supplement to the regular weekly lottery. Periods of promotion run from 6 weeks in some States to 6 months in other States. The games commonly feature a series of numbers printed on the ticket which, if matched at a weekly drawing, enable the purchaser to claim a specified prize according to the number of digits in the matching number. In addition, the overlay game tickets include a stub upon which a grand-prize number is printed. Players are encouraged to buy tickets during each week of the promotion to enable them to win one of the weekly prizes, and to save each of the stub portions to have a better chance of winning the grand-prize drawing conducted at the end of the promotion. Although the State lotteries want to provide variety in their overall marketing plans, it appears that the lotteries have begun to phase out this type of lottery in order that the public not become confused by the simultaneous marketing of three or four different lotteries.

Daily numbers games are presently conducted in New Jersey, Rhode Island, Massachusetts, and Maryland and are planned in Connecticut, Delaware, Michigan, New Hampshire, and Pennsylvania. Unlike the weekly, instant, and overlay lotteries, which are designed and promoted with the express purpose of raising revenue, the daily numbers games are promoted both to raise revenue and to combat the established illegal numbers games in those States. The legal numbers games are similar to their illegal counterpart in that the player may select his own three-digit or four-digit number and may also have a runner or courier place his daily bet for him. As far as is practicable, the States have tried to pattern the legal numbers games after the attractive features of the illegal game in an attempt to lure veteran numbers players to the former. Moreover, the new games offer certain advantages; in addition to the certainty that the player will be paid if he wins, in Massachusetts and New Jersey there is the possibility of very large payoffs if the winning number is not selected by many participants in that particular day’s parimutuel pool.

Because of the relatively short time the legal numbers games have been in operation, accurate evaluations of the game’s market potential cannot be made with any reliability: It is possible, however, that the promotion of

the game could widen the appeal of numbers play to suburban areas and increase participation in both the legal and illegal games.

While it may be too early to make any judgments concerning the crime-fighting potential of the legal numbers games, reports thus far from the three States where the legal game is in operation have been encouraging. The Rhode Island lottery has reported that the illegal numbers operations in that State have been forced to raise their payoff rates and have attempted to persuade vendors of the legal numbers game to assist them in the operation of the illegal game. In addition, it appears that many of the illegal numbers operations in Rhode Island regularly use the legal number for their own purposes. Quite the opposite appears to be happening in Massachusetts: It has been reported that illegal numbers operations will not use the legal number because they cannot compete with the State’s higher payoffs available under the parimutuel style of payoffs, and because prize payments are allocated at 60 percent of gross revenues. The following table shows the key features of the three legal numbers games:

TABLE 5-54.—DAILY NUMBERS GAMES

State	Prize payment allocation	Method of payoffs
Massachusetts	60%	parimutuel
New Jersey	50%	parimutuel
Rhode Island	50%	fixed odds

### Security and Drawings

Computers maintain distribution, sale, and payment records of tickets; the amounts placed into special lottery accounts at each designated bank; and the commissions paid to the banks and sales agents. An algorithm in the computer develops a unique method for each State to determine the lottery number on each ticket from its serial number.

When a purchaser claims a prize, numerous checks are made on the validity of the claim. The computer checks where the ticket was purchased, to determine if it was stolen; the serial number and lottery number are compared with the algorithm to prove the authenticity of the claim. If there is a mismatch, no payment is made and the claim is investigated. The use of computers has made it virtually impossible to forge, steal, or duplicate lottery tickets successfully. Unlike the lotteries of the 19th century, the modern State lotteries have attained a reputation for honesty that, with a few exceptions, may account for a large measure of their popularity among the citizens in those States where they are located.

Lottery drawings are conducted in public (in many

States on weekly television programs) by means of open mechanical devices that insure randomness of selection. Results of the daily numbers drawings games are shown in Massachusetts and Rhode Island during 11 p.m. TV news programs. (The results of previously run horseraces are incorporated into the drawing procedure by each of the States to retain their allowable exemption from the imposition of the Federal wagering excise tax on their gross receipts.)

The above notwithstanding, difficulties that have hurt the public image of lotteries have been encountered in several States. The Delaware lottery was plagued from the beginning by disappointing sales and political infighting, and was shut down shortly after its introduction; after many months, the lottery resumed operation with a more streamlined game. In Ohio, charges of misuse of lottery personnel by the deputy director, who was involved in a campaign for public office, were given considerable attention by the press, and the position of director became vacant twice within a 2-week period. However, neither of these episodes can compare in impact with the decision by the Governor of New York in October 1975 to suspend that State's lottery after a series of critical articles were published in the New York Daily News, the State's largest newspaper.

The reason for the Governor's action was the disclosure that a computer error had resulted in the printing of duplicate and triplicate tickets for the same drawing. This drawing had been intended to award money that had been accumulated by the lottery during a period in which, in 17 of the past 38 weekly drawings, the winning number had corresponded with an unsold ticket. Although technically without the power to stop the lottery, the Governor's order, along with the comptroller's decision not to approve the lottery payroll, effectively did so.

While it was never determined whether the computer mistake that brought down the lottery was the result of human error or an attempt at sabotage due to dissension within the lottery staff, a private consulting firm retained by the Governor to audit the lottery operations did report that computer control procedures were virtually nonexistent, and that overall security measures were dangerously lax.<sup>77</sup> The auditors concluded that these and other problems were "symptomatic of a poorly designed,

implemented, controlled, and managed lottery," and recommended a "complete overhaul" before operations were resumed.<sup>78</sup> Concerning the drawing of unsold tickets, the report observed that weekly lotteries in most States produced more tickets than were sold; however, the excessive degree to which this had occurred in New York indicated a "failure to assess these probabilities and to set the policy beforehand needed to cope with them."<sup>79</sup> (The New York Lottery returned to operation in August 1976, and began its first instant lottery shortly thereafter.)

In September 1976, the Delaware State Lottery introduced sports card betting as a regular feature. This game used the results of National Football League contests to determine the winners, who selected the outcome of several games and received prizes from a parimutuel pool. The Department of Justice has not acted against Delaware under Federal law. However, the NFL sought to enjoin Delaware from using the results of its games to determine the outcome of these pools, claiming that gambling based on the outcome of football contests would increase the risk of fixed games, would change the character of the fans, and would result in an unjust enrichment of the State of Delaware, since the State would derive revenue from commercially created events without compensation. Delaware maintained that these contests were in the public domain, and that to deny the State the right to operate sports cards would guarantee to organized crime a continued monopoly on this type of wagering. These arguments can only be resolved through litigation.<sup>80</sup>

In addition to the State lotteries, a private lottery is presently operating in Omaha, Nebraska. Designed and implemented along the lines of the computerized State lotteries, this game is being conducted to raise revenues for civic purposes. Originally it was controlled by the City Betterment Corporation, which was founded by a group of Omaha businessmen for the purpose of revitalizing the downtown area. However, an injunction against the game was obtained by the county prosecutor, because the CBC had been established for the express purpose of running the lottery—a violation of the applicable Nebraska statute. Subsequently, a different civic organization, which had been in existence for many years, took over the operation of the lottery; however, further legal challenges are expected at the county and State levels.

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## GAMBLING SURVEY RESULTS

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The National Gambling Commission survey of American gambling habits and attitudes has shown that almost one-quarter of the adult population in the United States bought lottery tickets in 1974 (table 5-55). Lotteries had a broader participation rate than any other form of commercial gambling, drawing players from all demographic groups. As with many other forms of gambling, lottery participation increased as income increased and was highest among whites and suburbanites. As with bingo,

participation was greatest among the middle-aged. There was little variation on the basis of education.

Following are additional highlights of the survey findings:

- Lotteries and Family Income (table 5-56). Almost half the residents of lottery States bought lottery tickets in 1974, spending an average of \$25 a year each. The lottery is one of the more regressive forms of gambling—that is, people in the low income categories spend proportionately more on it than those in the higher

income brackets. Only numbers and sports cards are more regressive than the lottery. Bingo is about the same.

The lottery's average takeout rate of 55 percent is higher than that of any other form of commercial gambling. Bingo has the second highest takeout rate (33 percent), followed by off-track betting (21 percent), track betting (16.6 percent), and casinos (15 percent). Among the illegal games, only sports cards have a higher takeout rate than the lottery.

- Lotteries and Other Forms of Gambling (table 5-57). Lottery players engage in other gambling activities more than the general population and, in particular, are more likely to gamble illegally than are the players of other legal games. They play numbers at nearly twice the rate of other bettors. In addition, there is evidence (discussed in greater detail in chapter 4 of this Report) that the introduction of a State lottery tends to increase participation in numbers games. Since the two forms of gambling are so much alike, it is possible that publicity generated by the lottery encourages numbers playing as well.
- Reasons for Playing (table 5-58). Unlike other forms of gambling, the chance to make money was an important factor in motivating people to buy lottery tickets. With all other forms of legal gambling, money considerations were clearly subordinate to an expressed interest in the activity itself. The principal reason cited for not buying lottery tickets was lack of interest rather than reluctance to spend or lose money. Very few people stated that they did not buy lottery tickets for moral or legal reasons, or because of adverse social consequences.
- Attitudes Toward Legalization (table 5-59). More than three-quarters of those living in States with lotteries favored legalization, compared to only about half the population in States without lotteries. Sixty-two percent of those living in States without lotteries said they would not buy tickets if the lottery were legalized, indicating that among the lottery's supporters are a number of people who would not patronize it. Residents of the northeastern lottery States overwhelmingly supported the lottery. Opposition was strongest among older people, residents of southern

States, and those earning under \$5,000 and having less than a high school education.

- National and Local Lotteries (table 5-60). Most people preferred the current lottery model—State-operated

TABLE 5-55.—DEMOGRAPHIC CHARACTERISTICS OF LOTTERY PLAYERS

	Percent who bought lottery tickets in 1974
Total Sample	24
Sex	
Male	29
Female	20
Race	
White	25
Nonwhite	19
Region	
Northeast	55
North Central	32
South	6
West	3
Age	
18-24 years	17
25-44 years	30
45-64 years	25
65 and over	10
Income	
Under \$5,000	10
\$5,000-\$10,000	15
\$10,000-\$15,000	24
\$15,000 and over	33
Education	
Less than high school	18
High school	26
Some college	26
College graduate	31
Distance from 25 largest cities	
24 miles or less (urban)	28
25-49 miles (suburban)	39
50 miles or more (nonurban)	19

TABLE 5-56.—LOTTERY PARTICIPATION AND FAMILY INCOME

	Family income						Total
	Under \$5,000	\$5,000-10,000	\$10,000-15,000	\$15,000-20,000	\$20,000-30,000	Over \$30,000	
States with legal lotteries							
Percent who bet	30.6	45.5	52.5	60.0	57.4	50.6	47.8
Average annual bet per bettor	\$24	\$37	\$32	\$19	\$25	\$17	\$26
Average annual bet per capita	\$7	\$17	\$17	\$11	\$14	\$9	\$13
Average annual takeout per capita (takeout rate 55%)	\$4.12	\$9.30	\$9.26	\$6.13	\$7.83	\$4.80	\$6.99
Percent of income:							
Bet per capita	0.30	0.23	0.13	0.06	0.06	0.02	0.08
Taken out per capita	0.16	0.12	0.07	0.04	0.03	0.01	0.05

and regulated. More than 60 percent of those interviewed stated their opposition both to a national lottery and to local lotteries. In States without lotteries, however, most people who said they would favor legislation of a State lottery also said they would support a national lottery, whereas residents of lottery States apparently feel that one lottery is sufficient.

TABLE 5-57.—LOTTERY PARTICIPATION AND OTHER FORMS OF GAMBLING

	Percent		
	Total sample	All 1974 bettors	1974 lottery players
Type of Legal Gambling Played			
Sports with friends	28	46	43
Bingo	19	31	35
Horseraces	15	23	25
Casinos	10	16	11
Dog races	4	6	5
Type of Illegal Gambling Played			
Any illegal game	11	18	23
Sports bets	4	6	9
Numbers	3	5	8
Horse bets	2	4	5

TABLE 5-58.—REASONS FOR BUYING OR NOT BUYING LOTTERY TICKETS

	Percent		
	Total sample	States where legal	States where not legal
Reasons for Buying Tickets			
Interest: good time, excitement, challenge	82	82	83
Money: make money, get rich	77	79	62
Reasons for Not Buying Tickets			
Lack of interest: don't know or think about it, waste of time	68	79	64
Money: don't want to lose money, waste of money	46	61	42
Moral reasons	9	9	9
Legal reasons	16	1	20
Social reasons	2	3	2
Availability	3	—	—

NOTE: Respondents chose one, two, or three reasons from a list of several reasons provided.

TABLE 5-59.—ATTITUDES TOWARD LEGALIZATION OF LOTTERIES

	Percent			
	Positive to legalization	Negative to legalization	Un-sure	No answer
Total Sample	61	29	6	4
Legal Status				
States with lotteries	77	14	7	2
States without lotteries	49	41	5	5
Region				
Northeast	84	8	7	1
North Central	68	22	8	2
South	37	49	6	8
West	62	33	3	2
Income				
Under \$5,000	38	46	12	4
\$5,000-\$10,000	53	33	8	6
\$10,000-\$15,000	66	25	5	4
\$15,000 and over	71	24	4	1
Age				
18-24 years	64	28	4	4
25-44 years	69	23	6	2
45-64 years	61	30	6	3
65 and over	34	50	10	6
Education				
Less than high school	45	38	10	7
High school graduate	66	27	4	3
Some college	73	22	5	0
College degree	72	22	4	2

TABLE 5-60.—ATTITUDES TOWARD NATIONAL AND LOCAL LOTTERIES

	Percent		
	Total sample	States with lotteries	States without lotteries
National Lottery			
Favors instead of State lottery	1	1	2
Favors in addition to State lottery	22	19	37
Opposes national lottery	62	67	35
Don't know/don't care	5	5	5
No answer	10	8	21
Local Lottery			
Favors instead of State lottery	4	4	3
Favors in addition to State lottery	15	14	19
Opposes local lotteries	67	69	54
Don't know/don't care	5	6	2
No answer	9	7	22

## CONCLUSIONS AND RECOMMENDATIONS

In chapters 1 and 2, the Commission outlined its position on what the basic legal framework governing the operating of lotteries should be. In keeping with the national policy, **the Federal Government should limit itself to preventing the channels of interstate commerce from being used to interfere with State policies concerning lotteries.** If lotteries of any nature—whether State-conducted, commercial, or played for civic or charitable causes—are authorized within a given State, there is no rational justification for Federal denial of the use of mailing or broadcasting facilities to disseminate materials or information about such a lottery within that State.

If the purchase of the above-described lottery tickets is permissible within a sister State, the Federal Government should not prevent the channels of interstate commerce from being used to facilitate the traffic of lottery materials and information between those States. Accordingly, unless a State has specifically prohibited the sale or possession of certain lottery materials, the Federal Government should not prevent those materials from being mailed into that State from States where such materials are also legal; likewise, the broadcasting of information and advertising about such a lottery by licensees located within a State where the sale and possession of such lottery materials are legal should not be prevented.

At the same time, the Federal Government should stand ready to assist any State when the facilities of interstate commerce are being used to promote interference with that State's lottery policies. If the sale or possession of certain lottery materials has been prohibited by a State, the Federal Government should prevent those materials from being mailed or transported into that State from other States, regardless of the legality of those materials in the State of origin.

Similarly, the broadcasting of information about lotteries by licensees located within States where such lotteries are illegal should be forbidden. The statutory revisions proposed by the Commission in chapter 2 would effect these changes in present Federal policy.

The National Gambling Commission's survey data support the conclusion that the basic weekly lottery, as presently operated by all 13 of the lottery States, does not have a harmful impact on society. Almost half the residents of those States play the game at least occasionally, and the average amount wagered is less than \$25 a year. A negligible percentage wagers more than \$100 a year. All segments of society participate in lotteries and very little time and emotional involvement are expended by the players.

Although it appears that access to a State lottery increases participation in illegal numbers games, the recent introduction of legal, daily numbers games in three of the lottery States may reverse that trend. At present, however, there are not enough data to determine whether these legal numbers games will be truly competitive with their illegal counterparts and whether they will discourage or

encourage participation in the illegal games, although these States do contend that their games are making inroads into the illegal numbers play.

As a source of revenue to the States, lotteries are relatively inefficient compared to broad-based forms of taxation. They are also more regressive, as that term is defined in chapter 4, than most other forms of gambling since individuals in lower income brackets spend proportionally more money on them than do persons with higher incomes. No State now derives more than 3 percent of its total revenues from lotteries, and it would be futile for State policymakers to look to lotteries as a substitute for traditional forms of taxation. Although a well-managed State lottery can make a modest contribution to satisfying a State's overall revenue needs, **the Commission recommends that in this instance, the earmarking of lottery revenues for specific State programs be avoided because this practice tends to warp the budgetary process and to deprive State officials of the flexibility required to meet changing needs.**

In general, State lotteries have developed highly successful systems of internal security and are capable of protecting the integrity of the games from theft, forgery, and related conduct. Where problems have occurred—most notably in New York—they have been due to breakdowns in management, resulting in the failure to supervise adequately the control mechanisms necessary to insure trouble-free operation. **The Commission believes that State lotteries should be governed by statutes and regulations that provide those responsible for the proper management and control of the games with sufficient authority. The lottery agency should be headed by one individual who is directly responsible to the Governor.** He should have the power to hire civil service employees, to make contracts, and to promulgate the necessary regulations to insure efficiency and propriety. The daily administration of State lotteries must be taken out of the political arena.

The 19th century lotteries were guilty of the worst kinds of corruption, which the modern State lotteries have successfully avoided. There are, however, other aspects of their operation which have come to be associated in the 20th century with deviations from good government. We refer here to the creation of political patronage jobs at public expense; to the awarding of lucrative consulting and promotional contracts; and to the utilization of manipulative advertising practices. The problem is compounded when State lottery commissions, acting under the general authority to create a lottery, establish whole new varieties of gambling. A State legislature may not have contemplated instant games and sports pools when it enacted the original lottery legislation. For these reasons, **the Commission believes that State legislatures should periodically conduct comprehensive reviews of the status of gambling conducted by State lottery agencies, and should make sure that all of their practices are in line with the original legislative intention.**



If a State is going to operate a lottery it must go even further. By directly engaging in the promotion of a gambling business, a State takes on the responsibility of insuring that that enterprise is conducted in the best interests of the people. Indeed, the State as lottery entrepreneur has a special fiduciary responsibility to its citizens; since the presumption exists that the State is acting on behalf of the people, it has an obligation to inform them of its intention to profit from their participation. **Accordingly, the State must take care to inform the public fully as to the odds and character of the games being offered, and to avoid any misleading practices in its advertisements and promotional activities.** Although the basic weekly lottery is a relatively benign form of gambling, the States should conscientiously disseminate information about the probabilities involved in winning a prize, and should scrupulously limit their lottery advertisements to those informing the public of the existence and nature of the games offered, rather than actively encouraging them to participate.

**In this context, the States have the responsibility to police themselves. Should they fail in this responsibility, Congress should consider giving the Federal Trade Commission the explicit authority to set and enforce compulsory guidelines.**

The various promotional overlay games should be operated under the same standard. As long as these steps are taken, the States are capable of operating such lotteries without any avoidable adverse consequences to the community.

Where the Commission does find a serious potential for abuse in the present practices of the State lotteries is in their increasing reliance on the instant game as both a promotional vehicle and a revenue source. Since lotteries are basically regressive, and since the odds against the player's winning a prize are greater than in most other forms of gambling, any lottery which in fact encouraged frequent participation might prove to be inimical to the general welfare. **The nature of participation in instant games should be carefully monitored;** the lotteries have acknowledged that these games, when first introduced, fostered instances of long lines and repetitive ticket purchases. The Commission's social survey was conducted

too early to provide data on instant games; however, **should evidence of excessive participation arise, the Commission believes that active State promotion of such lotteries would sacrifice the best interests of the public to the desire to obtain revenue. Since attempts to limit the frequency of player participation would appear to be unenforceable, the Commission would see no alternative to recommending that such games should not be conducted directly by the States.** If a State were to be unwilling to forgo the revenues from such lotteries, it would be preferable to have them operated by private entrepreneurs who were as strictly licensed and controlled as are the casino operators in Nevada. Then, at least, the participants would be fully aware that the games were designed only to make money, with the States imposing taxes and licensing fees to generate revenues.

**If the States continue to move in the direction of legalized numbers gambling, then the Commission believes that they should forgo all revenue considerations for these games, and should concentrate on the law enforcement objective of eliminating their illegal competitors.** To do otherwise would be to promote a regressive form of gambling directly among the poor, and to remove revenues from the communities that need them most. A maximum rate of payout would insure that revenues were returned to the neighborhoods which supported the games, and would make the lotteries more competitive with organized crime.

If State-conducted lotteries are properly set up and managed, and if their promotional and marketing techniques are strictly controlled, they can be an effective means of raising modest revenues for government purposes without adverse consequences to the public. To implement these policies, **the Commission recommends that a statute be considered by those States which choose to operate lotteries** (contained in an appendix to this Report). This enabling act contains the basic provisions necessary to establish a proper and efficient State lottery. Also proposed is a regulation concerning the disclosure of odds, which the Commission believes should be adopted forthwith by all of the current lottery States, and a regulation concerning instant games which is recommended should evidence of excessive play be provided.

# BINGO

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American women play a very strange game. Can't recall its name, but it's played in a large hall by several hundred women seated at tables with a number of small cards before them. A man on an elevated platform constantly calls out numbers to which the women listen attentively, never saying a word. Then suddenly one woman shouts at the top of her voice: "Bingo!" and all the others exclaim, "Aw nuts!"

*Scarne's Complete Guide to Gambling*

Although the above account is that of a bemused Englishman's first reaction to bingo, it represents a common—and inaccurate—perception of one of America's most popular and widely played gambling pastimes. Contrary to popular belief, bingo cannot be categorized simply as a parochial, low-stakes game played by middle-aged and elderly women.

It is, rather, a billion-dollar industry (much of it illegal) whose popularity permeates all aspects of American society, and the abuses of which often go undetected or unremedied.

Bingo nonetheless holds a unique position among the various forms of gambling: Many people do not consider it true gambling at all. Because bingo sessions are usually run or sponsored by charitable organizations—churches, synagogues, service clubs, and the like—people tend to attribute to it a respectability they would not accord, say, numbers playing. Bingo operations—lawful or not—function so openly and are so numerous that many players never question their legality. And some would argue that the amount of money an average player spends on an evening of bingo—less than \$6.00—is too small to be considered “gambling”; rather, they see it as an “entertainment” fee.

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## Background

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The origin of bingo is obscure: It has variously been reported as an English, Dutch, or Swedish game. One gambling authority says it developed from the Italian parlor game of lotto, which in turn was based on the Italian National Lottery, now 450 years old. Another source claims it evolved from keno, a lottery popular in New Orleans in the 1840's. Revised forms of lotto and keno are still played today.

Whatever its origin, bingo has undergone a number of changes over the years. The 1863 American edition of Hoyle lists bingo as a game played with dominoes. In the 1920's, movie theaters had bingo nights, which were actually raffles intended to increase business and circumvent State laws prohibiting such activities. At these raffles, the winner of a drawing would shout “Bingo!” to claim his prize.

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## Mechanics

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Modern-day bingo, also known as beano, is a simple game, based entirely on chance and played until a participant wins. The games are often held in lodges, halls, church basements, and permanent “bingo parlors.” Long tables are set up, and at each seat bingo cards and covering chips are placed. The cards, made of cardboard or paper, are printed with five rows of five squares each. One letter of the word BINGO appears over each of the vertical columns. All of the squares contain a number, except the “free” center square. Numbers 1 through 75 are used. The “B” column usually contains any five numbers between 1 and 15; the “I” column, any five between 16 and 30; and so on.

The purpose of the game is to cover enough called numbers to form a pattern—usually a vertical, horizontal, or diagonal line, or four corners. There are also many special games and gimmicks designed to increase participation.

In a typical game, the announcer calls a letter and number, randomly selected from 75 ping-pong-type balls printed with a letter from the word BINGO and a number from 1 through 75, in the same groupings as the cards. As these numbers are called, the balls are placed on a master board containing all the letters and numbers to form a record of the game.

The two most popular devices used to insure random selection of a ball are the bingo cage, a wire mesh sphere which is twirled to mix the balls and then stopped to allow one ball to fall out of the bottom, and the bingo blower, a glass enclosure in which the balls are kept aloft by a jet of air until one ball falls through a small opening.

When a person—or persons—shouts “Bingo!” the announcer and a floor person check the cards against the master board. If the cards tally, the winner or winners receive their prizes and a new game begins. As many as 90 or more games may be played at a single session.

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## Volume of Business

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Because so much of bingo playing is illicit, and because reporting procedures are unreliable or nonexistent even in some States where the game is legal, a total estimate of money wagered on the game is impossible to make from official sources. So, too, for different reasons, is an estimate of the total revenue raised by the States through bingo licensing and taxation. An official of one State, however, has said privately that bingo there was a “huge” business, unpoliced, underreported, and answering only to the whims of local authorities. An indication of the success of the game can be seen in New York, where in 1 year the reported handle alone was nearly \$200 million (from

which the State realized more than \$1 million in revenue).

From projections of data in its household survey, the Commission estimates that about \$1.7 billion is spent—legally and illegally—on bingo in a given year. The average player bets \$5.93 per session.

## Bingo Regulation

At present, 34 States sanction bingo (see table 5-61). The methods by which they license, tax, and regulate the game vary widely, however.

TABLE 5-61.—STATES PERMITTING BINGO

State	State approval	Local approval	License required	License fee	Noncharitable organizations	State tax	Total handle <sup>1</sup>	Revenue to State <sup>1</sup>
Alaska	yes		yes	\$10 p.a.			N/A*	N/A
Arizona	yes		yes	\$75 p.a. <sup>2</sup>	yes		N/A	N/A
Colorado	yes		yes	\$50 p.a.			\$11,937,450	\$131,641
Connecticut	yes		yes	varies			N/A	N/A
Delaware	yes		yes	\$15 p. event			\$8,310,396	\$39,780
Florida	yes		no	—			N/A	N/A
Illinois	yes		yes	\$200 p.a.		10%	N/A	\$6,842,946 <sup>3</sup>
Iowa	yes		yes	\$10 p.a.			N/A	N/A
Louisiana	no	yes	yes	none			N/A	N/A
Maine	yes		yes	\$2 p. week			\$5,437,697 <sup>5</sup>	\$24,210 <sup>5</sup>
Maryland	no	yes	yes	varies	yes <sup>4</sup>		N/A	N/A
Massachusetts	yes		yes	\$50 p.a.		5%	\$73,333,897 <sup>3</sup>	\$3,667,992 <sup>3</sup>
Michigan	yes		yes	\$100 p.a.			\$84,000,000 <sup>6</sup>	\$189,260
Minnesota	no	yes	no	—	yes <sup>4</sup>		N/A	N/A
Montana	no	yes	yes	N/A			N/A	N/A
Nebraska	yes		yes	\$10 <sup>7</sup> p.a.		10% <sup>7</sup>	\$5,364,563	\$536,456 <sup>7</sup>
New Hampshire	no	yes	yes	\$10 p. month	yes		N/A	N/A
New Jersey	no	yes	yes	\$10 p. event <sup>7</sup>	yes		\$93,549,474	\$331,375
New Mexico	yes		no	—			N/A	N/A
New York	no	yes	yes	\$12.50 p. event <sup>8</sup>			\$182,312,388	\$1,122,554
North Carolina	no	yes	no	—			N/A	N/A
Ohio	yes		no	—			N/A	N/A
Oklahoma	no	yes	yes	\$25 + \$5 p.a.			N/A	N/A
Oregon	yes		no	—			N/A	N/A
Rhode Island	yes	yes	yes	\$10 p. event			N/A	N/A
South Dakota	yes		no	—			N/A	N/A
Tennessee	yes		no	—	yes <sup>9</sup>		N/A	N/A
Vermont	yes		no	—			N/A	N/A
Virginia	yes <sup>10</sup>		yes	varies <sup>10</sup>			N/A	N/A
Washington	yes		yes	varies		11	\$20,894,381	\$73,130
Wisconsin	yes		yes	\$10 p.a. & \$10 p. event			\$4,444,048	\$345,859
Wyoming	yes		no	—			N/A	N/A
Kansas	yes		yes	\$25 p.a.		yes <sup>12</sup>	\$10,658,252 <sup>14</sup>	\$588,249 <sup>14</sup>
Nevada	yes	yes	yes	varies	yes	yes <sup>13</sup>	N/A	N/A

\*Not available

<sup>1</sup> Except where otherwise indicated, figures are for calendar year 1974.

<sup>2</sup> \$50 to the State, \$25 to the municipality; smaller operations pay \$5 each to State and municipality.

<sup>3</sup> Fiscal year 1975.

<sup>4</sup> County governments may conduct bingo games to raise revenue.

<sup>5</sup> Fiscal year 1974.

<sup>6</sup> Estimated average annual handle.

<sup>7</sup> Fees and taxes on bingo are divided equally between State and municipalities.

<sup>8</sup> Operators must also pay a percentage of the take to the State.

<sup>9</sup> Labor unions may conduct bingo games.

<sup>10</sup> Municipalities issue licenses under uniform State statute, but set their own licensing fee.

<sup>11</sup> Municipalities may tax up to 10% of bingo operations within their jurisdiction.

<sup>12</sup> State imposes 3.5% sales tax and 2% enforcement tax.

<sup>13</sup> Bingo conducted for profit is taxed on the basis of its volume of business; bingo conducted for charity is not taxed.

<sup>14</sup> May 1975-March 1976.

About the only consistent factor in the States' treatment of bingo is their requirement that licensing be restricted to operations that are charitable in purpose. (A few States allow county governments, labor unions, political groups, or service clubs to conduct games as well.) In Michigan, for example, bingo licenses are issued only to "Religious," "Educational," "Veterans," "Fraternal," "Service," and "Senior Citizens" groups. (It should be noted that despite the ostensibly philanthropic motivations attributed to bingo sponsors, only 2 percent of the players who responded to the Commission's survey said they played bingo because it was in a "good cause." And in Nevada, where bingo is a commercial game like any other, the participation rate is higher than elsewhere.)

The authority for licensing and controlling bingo playing also varies widely among the States. In most, the State government is the licensing agent; in others, the county or other municipal government issues the permits; in Rhode Island and Nevada, authority is divided between State and local government.

The amount of the license fee, its distribution to the State and the community, and the manner in which it is imposed also differ greatly in the bingo States. Where there are license charges, annual fees range from \$10 (e.g., Iowa) to \$200 (e.g., Illinois). In some States, the operator is charged a fee every time a bingo event is held. In few cases does the fee appear to be prohibitive.

## Gambling Survey Results

The National Gambling Commission's survey of American gambling practices and attitudes revealed that bingo is a popular form of gambling whose appeal transcends specific sex, age, income, and education delineations. Nineteen percent of the population played bingo in 1974 (table 5-62). Of all types of gambling, legal and illegal, only lotteries enjoyed a higher participation rate than bingo, yet the bingo handle in 1974 was double that of the lotteries.

TABLE 5-62.—DEMOGRAPHIC CHARACTERISTICS OF BINGO PLAYERS

	Percent who played in 1974	Heavy players: Once a week or more	Moderate players: Once a month	Light players: Less than once a month
Total Sample	19	8	17	75
Sex				
Male	16	1	14	85
Female	21	13	18	69
Age				
18-24 years	27	4	27	69
25-44 years	21	8	15	77
45-64 years	16	9	14	77
65 and over	8	15	5	80
Income				
Under \$5,000	9	25	13	62
\$5,000-\$10,000	19	4	15	81
\$10,000-\$15,000	20	12	11	77
\$15,000 and over	21	6	22	72
Education				
Less than high school	15	10	9	81
High school graduate	23	8	23	69
Some college	21	6	16	78
College graduate	16	5	16	79
Marital Status				
Married	18	6	17	81
Divorced, separated	28	20	10	69
Never married	23	0	20	78
Widowed	12	43	10	79

Because of the game's wide appeal, it is difficult to develop a profile of the "average" bingo player. Although the stereotype of a bingo player is a woman, 16 percent of the male population played bingo in 1974—more than bet on the horses or placed sports bets with bookies. The stereotypical bingo player is middle-aged or elderly, yet the survey results show that players under 25 had the highest proportional representation among all age groups, while players over 65 had the lowest.

Yet the stereotype is not entirely a myth. If all bingo players are divided into three groups on the basis of frequency of participation, the popular image of the bingo player appears among the 8 percent who play once a week or more. Middle-aged and elderly women, widows, and those earning under \$5,000 a year are highly represented among the "heavy" bingo players. But among the great majority of players—the 75 percent who play less than once a month—distinctions on the basis of age, sex, income, marital status, and education are obscured.

Following are additional highlights of the survey results:

1. Bingo and Family Income (table 5-63). The average annual wager by bingo players earning under \$5,000 was \$142 in 1974; players in all but one of the other income categories wagered less than \$100. The average annual wager for all players combined was \$74. Only lotteries and sports cards had lower stakes.

Bingo is one of the more regressive forms of gambling—that is, those in the lower income groups spend proportionately more of their income playing it than those in higher income categories. It is less regressive, however, than numbers or sports cards, and about the same as State lotteries.

2. Reasons for Playing (table 5-64). Despite bingo's association with charity, most people do not play for charitable reasons. Bingo is viewed more in "social" terms than other forms of gambling; most players play "to have a good time," or for excitement or challenge. Less than a fourth of all players cited the chance to make money or to get rich as a reason for their playing. Among nonplayers, lack of interest was the primary reason given for not participating. About a third of the nonplayers cited money

TABLE 5-64.—REASONS FOR PLAYING AND NOT PLAYING BINGO

Reasons for playing	Percent
Interest:	75
Good time, excitement, challenge	
Pass the time	
Money:	23
Make money, get rich	
Reasons for not playing	Percent
Lack of interest:	94
Don't know or think about it, other things to do	
Money:	35
Costs too much, waste of money	
Moral Consequences	3
Legal Consequences	2
Social Consequences	4
Availability	5

NOTE: Participants chose one, two, or three reasons from among several reasons provided for playing or not playing.

reasons. Adverse moral, legal, and societal consequences of playing bingo were rarely mentioned.

3. Legal Versus Illegal Bingo (table 5-65). Fully 44 percent of those living in States where bingo is illegal believe it is legal, making bingo the form of gambling about which public knowledge is least accurate. The confusion may be partly due to the game's close association with respected community institutions such as churches and charitable groups and to the fact that a number of States permit charitable exemptions to their lottery and bingo prohibitions.

Of all forms of gambling, only bingo received majority support for legalization among people who live in States where bingo is currently illegal. Twenty-two percent of the nonplayers who did not know that bingo was legal in their State said they would play if it were legal. This represents a large potential market for the game.

TABLE 5-63.—FAMILY INCOME AND BINGO PLAYING

	Family income						Total sample
	Under \$5,000	\$5,000-10,000	\$10,000-15,000	\$15,000-20,000	\$20,000-30,000	\$30,000 & over	
Percent who bet	8.68	18.84	20.27	21.56	22.05	17.17	18.73
Average annual bet per player	\$142	\$26	\$114	\$55	\$65	\$97	\$74
Average annual bet per capita	\$12	\$5	\$23	\$12	\$14	\$17	\$13
Average annual takeout per capita (Takeout rate: 33%)	\$4.06	\$1.58	\$7.62	\$3.91	\$4.71	\$5.51	\$4.28
Percent of income:							
Bet per capita	0.49	0.64	0.18	0.07	0.06	0.04	0.08
Taken out per capita	0.162	0.002	0.061	0.022	0.019	0.019	0.027

TABLE 5-65.—DIFFERENCES IN BEHAVIOR AND ATTITUDES OF STATES WITH LEGAL BINGO VERSUS STATES WITH NO LEGAL BINGO

	Percent	
	States where legal	States where illegal
Knowledge of legality:		
Believe it is legal	77	44
Believe it is not legal	16	41
Don't know	7	15
Attitude toward legalization:		
Positive	73	63
Negative	15	27
Unsure	9	7
No answer	3	3
Believe it is illegal but would bet if it were legal	22	28
Played bingo in 1974	21	16
Total days of attendance in 1974	52	48
Average daily expenditure per player	\$5.93	\$5.92
	All States	
Average days played each year	13	

## Bingo and the Law

Despite bingo's popularity as a charity fundraiser and its reputation as a harmless pastime, it has been the object of abuse by a number of sources: Illegal parlors resort to tricks to circumvent the law or openly defy it. Racketeers are thought to control bingo games—legal and illegal—in a number of urban areas. Skimming and other scams are practiced by both organized groups and shady independent operators. Some bingo players have devised elaborate cheating schemes.

Law enforcement officials appear to be of two minds regarding illegal or crooked bingo: One group feels that it is not a problem—and indeed, it often is not—or that the public wants it and the police have the responsibility of enforcing the law to the extent that the public desires. The other group, which feels crooked or illegal bingo is a problem, must often contend with an apathetic public and no investigative resources. It is probably fair to say that regarding illegal bingo operations, the police are damned if they do and damned if they don't.

**ILLEGAL BINGO PARLORS.** Some operators, to circumvent licensing requirements or statutory prohibitions, merely avoid using the word "bingo" and charge a fixed fee for a night of entertainment. That entertainment might consist of recorded music and "free" bingo games. At least one State has ruled that bingo is allowed if it is provided free during a paid entertainment. Other operators simply conduct open—and illegal—games, either moving from place to place and chancing the occasional police raid, or paying police officers to ignore

the violation. In any event, penalties for bingo violations in most States are minor and can be looked upon as a business expense.

**RACKETEERS.** Bingo takes in nearly \$2 billion a year. Laws regulating bingo may be unenforced or ambiguous, and it is easy to rake off substantial unreported amounts of money taken in at the games. Thus, it is apparent that national or local organized criminal groups would be interested in bingo as a source of illicit income. A number of cities report that a single commercial bingo operation runs the majority of charity-sponsored games.

Some States have legalized bingo and set up control boards not to increase State revenues but to provide State supervision of games thought to be controlled by organized crime—particularly organization-sponsored games run by commercial operations. Legalization gives the States control over licensing and access to bingo records.

Even where the police want to investigate bingo operations thought to be infiltrated by racketeers, public sentiment often is against it. The bingo-playing public feels that an innocuous source of pleasure is being taken from them while the police ignore "real" crimes such as robbery. Churches and social organizations often sponsor the games despite the crime involved; the money these games bring in may be their charity's only source of support—even if the charity is not receiving its fair share from the dishonest bingo operators. State and local governing bodies are unwilling to spend the money needed to finance a thorough investigation of an area's bingo operations. And laws surrounding bingo may be so ambiguous that cases actually brought to court are often dismissed, and the few penalties imposed are rarely more than minor fines.

**SCAMS.** Skimming—the practice of underreporting income from games and pocketing the difference—is thought to be the biggest problem regulatory agencies and law enforcement officials have with bingo. Skimmed money is tax-free: Not only do the Federal, State, and local governments not receive their share of taxes from that income, but State or local governments that base their license fees on the income from a bingo parlor or that receive a percentage of the take also lose revenues. And the charities these games ostensibly support, as well as the players themselves, lose.

Skimming is easy to do and hard to detect because bingo players pay cash. To prevent skimming, both the number of players and the number of cards they play would have to be counted for each game. With thousands of games played at hundreds of bingo sessions each week in a given locality, it would be practically impossible for a municipality—even assuming it had the resources and the inclination—to check each operation. (A private survey of three bingo sessions in a large mid-western city found one session's take underreported by \$1,000; the second by several hundred dollars; and the third to be even.)

Most bingo scams are simple: Not all games are reported to the regulatory authority, and the bingo operator merely pockets the money from the unreported ones. Skimming is even easier if the floor workers are involved: For

example, after a collector turns over the money picked up from the tables, the counter (who tabulates each game's income) records a figure lower than the amount collected and keeps the difference. To avoid paying out the large jackpots advertised to lure players, some operators hire a player who works from a card recorded earlier with the announcer. The announcer calls the numbers from that card to insure that the "plant" wins and the jackpot remains with the house.

**CROOKED PLAYERS.** Far fewer in number than the scams devised by bingo operators but much more intricate are the scams devised by individuals to cheat at bingo. Although most bingo payoffs are low, special jackpots of \$1,000 or more might make the scheming seem worthwhile. One elaborate scam was developed by a family of three who, working with thousands of hidden, memorized cards, were able to win some of the higher stake games by substituting winning cards from their hidden stacks. Another ploy involved the use of transparent card markers with numbers stuck to their undersides. If the player needed a certain number to win, he placed the correct numbered marker on the card. Since the checkers read the numbers through the markers, the false number escaped detection. Today, the use of serialized and specially printed cards makes cheating by a player extremely difficult, and such cheating is not considered a problem.

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## Consequences of Legalization

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The Commission's original research—especially its survey of gambling in America—has uncovered two facets of bingo playing that may contradict earlier perceptions of the game: Bingo is big business—nearly \$2 billion annually—and it is played extensively throughout the United States whether it is legal or not.

These findings will enable the States to evaluate their policies toward bingo and perhaps to change them. Following is a discussion of the issues surrounding bingo and the possible consequences of increased regulation of the activity.

Although bingo is now legal in 34 States, regulation of it varies widely: Only Nevada and Maryland allow straight commercial bingo; in most other States, bingo may be played only for charitable purposes. Almost all the States require bingo licenses, but few have license control

boards—licenses are merely filed with a State or local government office and are available, usually for a nominal fee, to anyone with an ostensibly charitable purpose. Most bingo operations keep few or sketchy records; often the statutes themselves do not require a strict accounting of income. Many times the charities these games are conducted to support receive only a small fraction of the money taken in. Law enforcement generally ignores illegal or dishonest bingo games: The few police efforts to crack down on these games are often resisted by the public, who want to play and see no harm in it; and most municipal or State budgets have few funds to spare for investigations. Many policemen believe that illegal bingo is a "victimless" crime, too insignificant to merit intensive enforcement.

It seems clear that few States have systems of bingo regulation that are effective or productive in terms of supervision, revenue raising, or law enforcement. Thus, States wishing to change their bingo policies find little to guide them.

In formulating bingo policy, the States must examine what their goals are, whether the benefits of effective regulation are worth the cost, and whether stronger regulation serves the public interest.

If the goal of increased regulation is to control illegal or dishonest bingo, States should realize that the effort requires considerable increases in money and manpower, as well as the active support of the community and its law enforcement personnel.

If revenues are the goal of bingo regulation, the States must be aware of how much money the games can be expected to generate. As with other forms of legalized gambling, there is a point at which operating costs and taxation decrease the payoff to the public to such an extent that the public turns to illegal games where the payoffs are higher.

If both ends—crime control and revenue—are desired, it may be possible to finance law enforcement efforts with the taxes received from the games. Whether this would still enable the State to have money left over for other purposes must be determined.

The Commission feels that the States should be aware of these issues as they develop their policies toward bingo. To that end, the Commission has drafted a model regulation designed to insure a realistic, practical, and orderly approach to bingo for those States wishing one; that model regulation appears in an appendix to this Report.

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## CONCLUSIONS AND RECOMMENDATIONS

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The Commission perceives little difference between "charitable bingo" and commercial bingo. Charitable bingo as it exists in most States is charitable only in that it is sponsored by statutorily sanctioned organizations such as churches and service clubs. It is operated, however, like a commercial operation: It offers large cash prizes; it promotes elaborate games designed to induce participants to buy more—and often more expensive—bingo cards to

increase their chances of winning; and, most important, it is open to everyone, not just to members of the sponsoring organization. Many charitable bingo occasions are run by commercial bingo operations, not by the members of the sponsoring organization. The Commission's survey has found that people play charitable bingo for the same reasons they might participate in commercial bingo: Bingo provides entertainment and a

chance to make money. The charitable aspects of the game are relatively unimportant. **For these reasons, the Commission recommends, for regulatory purposes, no distinction be made between charitable and commercial bingo.**

As stated earlier, bingo is a billion-dollar industry played by millions of people in every area of the country, whether it is legal or illegal. Bingo is also the most loosely regulated—or unregulated—form of gambling in America and as such is the object of numerous abuses which affect law enforcement, government revenues, and the players themselves. In addition, bingo is a highly regressive form of gambling, making it imperative that the State or local governing body take steps to control the game. **Because of bingo's pervasiveness and the income it generates, the Commission recommends that those States allowing bingo adopt and actively implement regulations to insure that the games are honestly run.**

Although it may be possible for a State to obtain certain revenues from legal bingo while actively enforcing the law concerning it, **the Commission believes that where a choice must be made, a State should concentrate its resources on the law enforcement aspects of bingo regulation.** A minimal State tax on all bingo games could pay for the enforcement of bingo regulation. Whether a higher tax, which would provide revenue in addition to law enforcement, would still enable the game to attract players despite the necessarily lower payout rate is unknown. Unscrupulous practices such as skimming, as well as the suspected involvement of organized crime groups in some bingo operations, also support the contention that tax revenues from bingo should be concentrated on police efforts. The office of the State

Attorney General should be responsible for enforcing the regulations.

Bingo's reputation as a harmless form of fundraising is not entirely deserved: Too often the charities these bingo operations ostensibly support receive only a minute portion of the handle from the games, and players who feel they are victims of unfair or fixed games have no redress. **Therefore, the Commission recommends that all bingo regulations state what percentage of the handle must go to charity and what percentage of the handle must be paid out in prizes. The Commission further recommends that each bingo organization be required to obtain a bond with the State that could satisfy all adjudicated claims against it. It also recommends that bingo operators be licensed by the State treasurer, as is the case in Massachusetts.**

In order that any bingo regulatory scheme be administered most effectively, **the Commission recommends that the States adopt an enabling act, where permitted by the State constitution, that would provide for a single bingo director.** (That enabling act could be modeled after the model State Gaming Act, which will be included in an appendix to this Report.) The director would supervise the conduct of bingo within the State by promulgating regulations based upon the model provided. Under the enabling act, the bingo director would be appointed by the chairman of the executive body of the State gaming board. To be eligible for the position, a person must be of such character and reputation as to promote public confidence and trust in the administration of bingo within the State, and make a complete disclosure of assets and liabilities to the gaming board.



# FOOTNOTES

<sup>1</sup> Information for this section was drawn from the following sources: (1) Best, Katherine, and Katherine Hillyer, *Las Vegas, Playtown USA* (New York, David McKay Co., Inc., 1955); (2) Herwitz, Raymond A., *Yes, You Can Win . . . But Don't Bet the Rent Money; The Story of Nevada Gambling* (New York, Vantage Press, 1969); (3) Lewis, Oscar, *Sagebrush Casinos; The Story of Legal Gambling in Nevada* (Garden City, N. Y., Doubleday and Co., Inc., 1953); (4) Monroe Keith, "The New Gambling King and the Social Scientists," *Harper's*, January 1962, pp. 35-41; (5) Nevada Gaming Commission, *Legalized Gambling in Nevada* (Carson City, State Printing Office, 1972); (6) Turner, Wallace, *Gambler's Money; The New Force in American Life* (Boston, Houghton Mifflin Co., 1965); (7) Wagner, Walter, *To Gamble or Not to Gamble* (New York, World Publishing, 1972).

<sup>2</sup> Lewis, *Sagebrush Casinos*, p. 56.

<sup>3</sup> Following the Kefauver investigations, several bills were introduced in the U.S. Congress to eliminate legal gambling in Nevada by one means or another. One of the bills, which would have taxed legal gambling out of existence, came precariously close to being passed. Some people believe that it was the threat of such action by Congress, and not pressure from the citizens of Nevada, that provided the strongest impetus for the gradual strengthening of State-level casino gambling regulations.

<sup>4</sup> Gambling in Nevada is called gaming, the term used hereinafter to refer to the industry as a whole.

<sup>5</sup> Includes actual gambling earnings only.

<sup>6</sup> Employment figures supplied by the Nevada Employment Security Department, Carson City, Nev.

<sup>7</sup> Nevada law provides that persons convicted of felonies cannot obtain gambling licenses. But since gambling violations in most States are misdemeanors, a prior gambling conviction is unlikely in itself to rule out license eligibility.

<sup>8</sup> The Hilton International has been able to reduce the incidence of cheating through the use of videotape cameras with slow motion devices. Five convictions have been obtained using videotape as evidence.

<sup>9</sup> Testimony of George Holt, Clark County District Attorney, April 19, 1975.

<sup>10</sup> Philip Richardson, "Effects of Legalized Gambling on Community Stability in the Las Vegas Area," unpublished paper prepared for the Twentieth Century Fund, 1973.

<sup>11</sup> Anthony Gabriel Vogliotti (*The Girls of Nevada*, Citadel Press, 1975) generally supports this contention but claims that some of the lower-level employees—bellmen, pit bosses, bartenders, etc.—act as "agents" for prostitutes as a sideline.

<sup>12</sup> Testimony of Richard P. Crane, August 20, 1975.

<sup>13</sup> Nevada gaming regulations define hotel/casino complexes as those establishments with at least 300 rooms and \$9 million total gross revenue.

<sup>14</sup> Albin J. Dahl, "Some Observations on Gaming Control Board Data on Group I Casinos," *Nevada Gaming Abstract*, 1971, pp. 111-112.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Testimony of Saul Leonard, Laventhol & Horwath, August 20, 1975.

<sup>18</sup> Includes Puerto Rico.

<sup>19</sup> Because of the small sample, data on compulsive gamblers in Nevada is less firm than other aspects of the Nevada study.

<sup>20</sup> The fact that Nevada has no race tracks may be another factor contributing to the low rate of illegal gambling there.

<sup>21</sup> Testimony of Sir Arthur Peterson, Permanent Undersecretary of State, Home Office, Great Britain; Sir Ronald Radford, Chairman, Her Majesty's Customs and Excise; Sir Stanley Raymond, Chairman, Gaming Board of Great Britain; Mr. William Stephens, Secretary to the Gaming Board of Great Britain; and Mr. Kenneth Witney, Special Consultant to the Royal Commission on Gambling; Washington, D.C., September 20-23, 1976.

<sup>22</sup> Testimony of the Honorable Arlington Butler, Chairman of the Gaming Board of the Bahamas; Washington, D.C., September 20-23, 1976.

<sup>23</sup> David Alexander, *A Sound of Horses* (New York, Bobbs-Merrill, 1966), p. 112.

<sup>24</sup> Arthur C. Gruen, "An Enquiry Into the Economics of Racetrack Gambling," *Journal of Political Economy*, Vol. B4, Number 1, February 1976.

<sup>25</sup> Daniel Suits, unpublished paper prepared for the National

Gambling Commission.

<sup>26</sup> John Ciccolo, "Economic Analysis of the Impact of Increasing Racing Dates and Changes in the Parimutuel Takeout Rate on the Thoroughbred Industry," National Gambling Commission, consultant papers.

<sup>27</sup> See table S-1 and accompanying explanation regarding racing figures.

<sup>28</sup> Defined here as tracks whose daily purse distributions were less than \$70,000 in 1970.

<sup>29</sup> The nine large tracks are Hollywood, Aqueduct, Santa Anita, Belmont, Saratoga, Del Mar, Oaklawn, Hialeah, and Monmouth. The average daily attendance at these tracks in 1970 was 22,000, compared to 7,000 at the smaller tracks. The average per capita wager at the large tracks was \$150 compared to \$77 at the small tracks. (Source: *The Future of Thoroughbred Racing in the U.S.*, by Pugh-Roberts Associates, Inc., July 1970).

<sup>30</sup> *Op. cit.*, Pugh-Roberts.

<sup>31</sup> The Commission, interested in exploring the consequences of making more realistic assumptions about the rate of inflation and the growth of the national economy, requested that certain additional computer simulations be run. Although the Commission offered to pay for these additional runs, the Pugh-Roberts staff did not respond to this request.

<sup>32</sup> State of New York Commission on Investigation, *The Financial Condition and Operations of Roosevelt and Yonkers Raceways and Their Regulation by the State Racing and Wagering Board*, March 5, 1976.

<sup>33</sup> Dog owners claim that when tracks are permitted to race their own dogs, abuses can occur. For example, a situation may arise in which all but two or three of the dogs scheduled to run in a particular race are owned directly or indirectly by the track. If, on the morning of the race, five of the six "house" dogs are exercised vigorously until they are extremely tired, there is a strong possibility that the sixth house dog will finish among the three winners. Anyone in a position to know what had occurred would thereby have a definite betting advantage.

<sup>34</sup> Among the security measures employed are the self-grading system in which greyhounds are rated on the basis of past performance, a special identification system, lockout kennels in which all dogs must be surrendered to the care of State officials 2 hours before they race, prerace and postrace drug testing, use of electronic timers, weigh-in requirements, and the drawing of lots to fill races.

<sup>35</sup> Ironically, casino owners in Nevada oppose the establishment of greyhound racing in their State and in California, fearing that competition from the tracks would reduce casino revenues.

<sup>36</sup> If OTB's interpretation of this statute is correct, then the Commission would recommend to Congress that the statute be amended to exclude legal OTB operations. One reason is that the separate pool arrangement tends to work to the advantage of illegal bookmakers, which is exactly the opposite of what Congress intended to accomplish through the statute's enactment.

<sup>37</sup> Due to the existence of the surcharge on OTB winnings, the OTB payout is actually lower than the on-track payout.

<sup>38</sup> Exotic wagers entail the selection of three or more horses.

<sup>39</sup> In some cases, tracks offer bets not available to OTB patrons.

<sup>40</sup> The time limit is expected to change to 10 minutes before a race.

<sup>41</sup> Exotic wagering constituted about 20 percent of the New York City off-track betting handle in 1974 and 1975.

<sup>42</sup> While there may have been other factors in the decline of the OTB handle, such as increased advertising by New York tracks, most observers believe that the surcharge was the greatest single cause.

<sup>43</sup> Commission hearings, May 6, 1975.

<sup>44</sup> Research by John Ciccolo on data for New York City thoroughbred tracks shows that the elasticity of off-track handle with respect to the takeout rate is substantially lower (—85) than the elasticity of on-track handle with respect to the same variable (—2.24). The results are reported in two papers contained in the Commission's appendix volumes: "Economic Analysis of the Impact of Increasing Racing Dates and Changes in the Parimutuel Takeout Rate on the Thoroughbred Industry," and "The Impact of the Introduction of Off-Track Betting: Some Preliminary Analysis."

<sup>45</sup> Interstate off-track betting is defined as any system that permits citizens in one State to wager on races run in another State.

<sup>46</sup> A bill, which has been passed by the New York State legislature but not yet signed by the Governor, would increase the maximum to 10 thoroughbred and 10 standardbred races.

<sup>47</sup> H.R. 14071, introduced in May 1976 by Representative Fred B.

Rooney of Pennsylvania, would outlaw all interstate parimutuel OTB within 5 years, thereby eventually putting the entire Connecticut operation out of business. A proposed amendment to the bill was defeated which would have allowed the races of "host" States to be used in interstate OTB under certain conditions, including consent of the host track and/or host State. The Commission has sent a report to Congress containing alternative proposals for an interstate OTB bill.

<sup>48</sup> See *Hoerner v. United States*, 147 U.S. 449 (1892) at 458.

<sup>49</sup> Farrell, Thomas, "The Politics of Prohibition: Numbers Gambling and Crime in America," Princeton, New Jersey, 1970.

<sup>50</sup> Ezell, John Samuel, *Fortune's Merry Wheel: The Lottery in America*, Harvard University Press, Cambridge, Mass., 1960, p. 30.

<sup>51</sup> Weinstein, David, and Lillian Deitch, *The Impact of Legalized Gambling*, Praeger Publishers, New York, 1974, pp. 8-9.

<sup>52</sup> Op. cit., Ezell, pp. 981-982.

<sup>53</sup> Ibid., p. 82.

<sup>54</sup> Op. cit., Weinstein and Deitch, p. 9.

<sup>55</sup> "Gambling in Perspective" survey prepared for the Commission, 1974.

<sup>56</sup> Ibid.

<sup>57</sup> Op. cit., Ezell, p. 95.

<sup>58</sup> Ibid., pp. 181-182.

<sup>59</sup> Op. cit., Weinstein and Deitch, p. 10.

<sup>60</sup> Ibid., p. 10.

<sup>61</sup> Ibid., p. 11, and op. cit., "Gambling in Perspective." See also Ezell, op. cit.

<sup>62</sup> Op. cit., Weinstein and Deitch, p. 11.

<sup>63</sup> Op. cit., Ezell, pp. 250-251.

<sup>64</sup> September 2, 1890 (H.R. 11569), "An Act to amend sections 3894, 3929, and 4041 of the Revised Statutes relating to lotteries." (c. 908 1, 26 Stat. 465)

<sup>65</sup> March 2, 1895 (S. 1620), "An Act for the suppression of lottery traffic through national and international commerce and the postal service subject to the jurisdiction and laws of the U.S." (c. 191, 1, 2, 28 Stat. 9631)

<sup>66</sup> See Internal Revenue Code 1954, Section 4401 (Wagering Excise Tax) and Section 4411 (Occupational Tax Stamp).

<sup>67</sup> Commission hearings, statement of Robert E. Walen, Executive

Counselor, State of New Hampshire, December 4, 1974.

<sup>68</sup> Ibid.

<sup>69</sup> See Internal Revenue Code 1954, Section 4402(3).

<sup>70</sup> Commission meeting, statement of Edward J. Powers, Executive Director, New Hampshire Sweepstakes Commission, June 7, 1976.

<sup>71</sup> Commission hearings, statements of Chairman Robert Q. Crane and Dr. William E. Perrault, Massachusetts Lottery Commission; former New Jersey Executive Director and presently Superintendent of the Lottery in Illinois Ralph Bacht; former Executive Director of the Maryland State Lottery Agency James Slicher; and New Hampshire Sweepstakes Executive Director Edward J. Powers all favored the revision of the United States Code, Title 18, Sections 1301, 1302, 1303, and 1304 to permit the use of the mails and broadcasting facilities by State-authorized and conducted lotteries; April 3, 1974.

<sup>72</sup> 18 U.S.C. 1301, 1302, and 1303. 39 U.S.C. 3005.

<sup>73</sup> Memo from James E. Ritchie, Commission Executive Director, to members of the Commission on the Review of the National Policy Toward Gambling, September 10, 1974. The Attorney General reaffirmed his position when he testified before the Senate Judiciary Subcommittee on Criminal Laws and Procedures on November 20, 1974.

<sup>74</sup> P.L. 93-583 signed by President Ford on January 2, 1975.

<sup>75</sup> Revenue figures, revenue allocations, and other general lottery information contained in this section was obtained from the individual State lotteries through Commission hearings and correspondence with the lotteries.

<sup>76</sup> Source: Public Gaming Research Institute, "Statistical Report," January 1976, Copyright 1975, Public Gaming Research Institute. All rights reserved.

<sup>77</sup> Arthur D. Little, Inc., "Summary of Findings: New York State Lottery," December 1975, p. 5.

<sup>78</sup> Ibid., p. 8.

<sup>79</sup> Ibid., p. 15.

<sup>80</sup> As to the issue of whether a sports pool is a lottery, a British Royal Commission in 1951 published a treatise by an Oxford mathematician who concluded that they were indistinguishable from a practical standpoint. See Hubert Phillips, *Pools and the Punter*, London, 1955.

# CHAPTER 6. ILLEGAL GAMBLING INDUSTRIES

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Illegal gambling has deep roots in American society. The European settlers who colonized the North American continent introduced inviting games of chance into what was to become the American culture. They also brought with them a diversity of opinion as to the moral, social, and economic propriety of gambling in general. While in many communities gambling was widely tolerated and often condoned, it has never enjoyed either prolonged

legal status or full-scale social approbation.

This chapter examines the development of illegal gambling industries in this country and the growth and influence of organized crime in the gambling field. It also describes how the major illegal games are operated today and concludes with a discussion of the controversial issue of sports betting, and recommendations on how to deal with it.

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## HISTORICAL VIEW OF ILLEGAL GAMBLING

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In the 17th and 18th centuries, gambling sentiment was broadly divided along geographical lines. In the southern colonies, where many of the settlers rapidly gained wealth and sought diversion, social wagering among the wealthy was deemed acceptable and the few antigambling laws that existed were not strict; they had as their objective mainly the maintenance of public order. Horseracing (and betting on the outcome of races) was also one of the most popular pastimes of the early southern gentry. Residents of New England opposed gambling because they considered it a form of idleness; 10 years after the landing of the Mayflower they passed a severe law against gambling and other activities that they felt undermined the work ethic. In the 1670's Massachusetts and Connecticut passed specific bans on lotteries, dice, and cards. New York established an early reputation for social "liberalism." When the Dutch surrendered that colony in 1664, the area that is now New York City became a pocket of "vice" on the Eastern seaboard, offering a variety of gambling amusements including horseracing, bullbaiting, and cockfighting.<sup>1</sup>

Eventually, geographical distinctions with respect to gambling practices were obscured. With the American population constantly on the move and growing with new waves of immigration, each population center came to reflect the diversity of gambling opinion, law, and practice.

By the mid-19th century the country was overrun with gambling fever. In the western mining and cattle towns, gambling was often the principal form of entertainment. The western saloons were often combinations of casinos, brothels, and bars. In the East, an antilottery sentiment had developed, and lottery opponents succeeded in persuading most of the States to abolish their lotteries. The antilottery movement was part of a Jacksonian attack on legislatively created privilege.

But it was in the towns along the Mississippi River and its

tributaries that the illegal gambling trade was liveliest. The first large gambling casino was built in New Orleans by John Davis. This establishment catered only to the wealthy. Later came the lower class houses of "the Swamp," described by one author as "stink-holes of creation."<sup>2</sup>

Although Chicago had only 600 inhabitants when it was incorporated in 1833, by the late 1840's it had more first-class gambling houses and big-time gamblers than either Cincinnati or St. Louis, which then had twice the population of Chicago. The dominant gamblers in Illinois prior to the great Chicago fire of 1871 were southerners who worked their way north on the Mississippi River steamboats.

New York City also became an early gambling center. By 1850, there were approximately 6,000 gambling houses, or 1 for every 85 residents. In Chicago, New York, and elsewhere, the gambling operators paid heavily for police protection, and included in their unwritten protection contracts was the understanding that occasional police raids would have to be staged for the sake of appearances.

The raiding squads were careful not to damage furniture or equipment, and policemen obligingly guarded the resort while the gamblers and their employees and suckers rode in the hacks to the nearest Magistrate and deposited small sums as bail, which was usually forfeited. This formality completed, they returned by carriage to the gaming house, the police retired, and play was resumed.<sup>3</sup>

The influence of gamblers extended far beyond the police department. A visitor to Chicago around 1870 might have found it difficult to believe that the hundreds of gambling houses operating freely were strictly prohibited by law. He might wonder also how this flagrant disregard for the law could go unheeded by officials and be ignored

by a generally law-abiding populace. Powerful machine politicians skillfully exploited the sentiments of different sections of the public. Generally, rural areas were intolerant of gambling. Urban areas, characterized by a new mix of peoples and religions, were tolerant. A movement to legalize gambling in Chicago, San Francisco, New Orleans, New York, or any other city in the late 19th century would have been roundly defeated, not only because of the underlying social and moral taboos still attached to the activity, but because it would have meant a possible end to the lucrative pipeline of payoffs to police and lawmakers.

The level of public tolerance toward all forms of gambling peaked in the 19th century. Various antigambling reform groups were active around the country at the turn of the century. In the early 1900's the constant harassment of gamblers by police during a fairly sustained reform movement in Chicago forced many gambling houses and policy and bookmaking operations to close. Those that remained operated more discreetly. Elsewhere, reformers succeeded in closing down racetracks in many States. By 1915, only seven States continued to allow racing. The reform momentum was relatively short lived, however. Ultimately the demand for gambling services succeeded in outstripping the reformers' ability to reform. But for the reformers there was a consolation prize in another area of public morals: the 18th amendment to the Constitution, which prohibited the manufacture, sale, and distribution of alcoholic beverages.

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## The Prohibition Era and Afterwards

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Although gambling syndicates existed before 1920, it was during the prohibition era that the criminal underworld acquired a tight organizational structure.<sup>4</sup> Much of the credit for this accomplishment has been assigned to Arnold Rothstein, a New York gambler born in 1882.

Basically, he transformed the world of crime from an anarchic into an authoritarian state. He gathered the loose, single strands of crime and wove them into a tapestry. He took the various elements that were needed to change crime from petty larceny into big business and fused them. The end result was a machine that runs smoothly today.<sup>5</sup>

Rothstein is also noted for having invented the intercity layoff system that insured bookmakers against heavy losses and thus provided the foundation for a nationwide gambling apparatus.

After Rothstein came a parade of underworld figures whose lives and exploits have been extensively documented in film and literature. From the profits of their bootlegging and gambling endeavors, figures such as Al Capone, Frank Costello, Bugsy Siegal, and Dutch Schultz built powerful criminal organizations that still exist today. Organized crime leaders today are less ostentatious than their predecessors. They have not abandoned the use of violence, and in fact rely heavily on the threat of violence to accomplish their goals. But they are generally

more discreet in their numerous business dealings, more eager to avoid publicity, and considerably less blatant in their relationship to city and State politics. Local politicians no longer turn out en masse for gangland funerals. Responsible for these changes are stronger State and Federal laws and enforcement efforts and a citizenry less tolerant of overt gangland transgressions than in the past. Revelations produced by the Kefauver investigation in 1950<sup>6</sup> and the McClellan hearings in 1963-64<sup>2</sup> focused national attention on the outrageous criminal activities of the underworld and stimulated more vigorous attempts at reform.

These efforts had some success. They resulted in the passage of a series of Federal laws (see chapter 2) which proved effective in eliminating illegal slot machines from stores and restaurants across the country and in closing illegal casinos, including those that were operating in resort areas such as Newport and Covington, Kentucky, and Hot Springs, Arkansas, and on Florida's Gold Coast, and in eliminating the walk-in bookie joints that existed in many cities. With the illegal casino and slot machine business virtually eliminated, many former gambling operators transferred their base of operations to Las Vegas (see chapter 5). Vestiges of the illegal casino business can be found in the form of floating card and dice games, generally played on the streets or in small dingy quarters with participants periodically moving from place to place to avoid apprehension. Finally, the new Federal statutes were successful in combating large interstate layoff operations, most of which were operated by organized crime.

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## Organized Crime

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Central to virtually every discussion of illegal gambling is the phrase "organized crime." This term has historically been defined, redefined, and utilized either to defend or reject numerous positions espoused by legislators, prosecutors, and other members of the legal community. The Commission has solicited, through research as well as testimony from various witnesses, definitions of the term and its utilization relative to gambling violations. The Commission recognizes that there are as many different definitions of organized crime as there are reasons to define it. The most recent definition provided by the FBI is as follows:

Organized crime is the sum aggregate of the more lucrative continuing types of racketeering activity involving some sort of formalized structure and generally requiring graft or corruption to conduct its operations without interference.<sup>8</sup>

The Commission finds this definition much too broad for the purposes of this Report. A numbers game operated in Harlem and providing payoffs to the police might well fall within the FBI's definition, and yet not be the type of illegal gambling business the Commission feels to be properly within the scope of the routine enforcement activities of Federal agencies. Another method of defining

organized crime hinges on the nature of the crime being committed. By that definition, a gambling business that requires several people working together to commit the crime is therefore an "organized" crime.

In 1967, the President's Commission on Law Enforcement and Administration of Justice suggested that the use of violence and corruption regularly by a group seeking to achieve criminal ends should mark the point at which crime is called "organized crime." Since that time, other definitions of "organized criminal ventures," "organized crime enterprises," and "organized crime syndicates" have been put forth by law enforcement officials, study groups, members of the judiciary, and legal scholars.<sup>9</sup>

This Commission rejects the concept of categorization based on the offense committed, as well as the correlative concept which lumps together any members of the criminal subculture bearing a semblance of organization. The Commission believes that members of Congress, as well as the vast majority of the American public, view the meaning of organized crime in the traditional sense; i.e., the national syndicate of Sicilian origin, providing many types of illegal services and having international ties, known generally as the Mafia or La Cosa Nostra. Law enforcement agencies and other authorities have, over the years, greatly expanded this definition, perhaps necessarily, for their purposes. However, the Commission believes that it is not helpful to use this expanded concept when discussing illegal gambling and therefore adopts the traditional definition. Should policymakers employ the broadened concept, it would, of course, then be necessary to review this Report with an eye toward a different application.

The following discussion of organized crime and its involvement with illegal gambling should be read in light of the above definition.

The Commission held hearings in various cities throughout the United States which elicited testimony from law enforcement officials, defense attorneys, and,

when possible, persons convicted of or involved in illegal gambling.<sup>10</sup> This testimony made it apparent that there is no uniformity of traditional organized crime control over illegal gambling throughout the country; in some cities such control exists, but not in others. Even where organized crime is a factor, the extent of its involvement varies.

In areas where there is no control by traditional organized crime "families," gambling may nonetheless be "syndicated." In any particular city or region, a criminal cartel or syndicate may control a particular type of illegal gambling; to the extent that such an organization follows a pattern of continual activity assisted by systematic corruption of government, the Commission does not suggest it be precluded from the prohibitory aspects of Federal legislation aimed at traditional organized crime or from carefully selected enforcement activities.

The Commission believes that such gambling cartels pose as great a threat to society as their traditional organized crime counterparts but do not lend themselves to the same type of identification and investigation. Beyond these two types of organizations involved in illegal gambling, the Commission specifically rejects the notion that traditional organized crime controls all illegal gambling or that all illegal gambling provides revenues for other illegal activities.

The Commission also acknowledges the existence of independent, nonsyndicated gambling violators who would not be covered by the above discussion. It believes that these individuals present a much less serious threat to society because their criminal activity generally is limited to gambling and is not accompanied by corruption and the use of violence. Consistent with its recommendations in chapter 2 regarding selectivity of prosecution, the Commission urges that such independent gambling operators receive minimal attention from Federal law enforcement authorities. Adoption of this policy would free additional resources for use against organized crime and syndicated gambling.

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## THE GAMES: NUMBERS

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### Early Development<sup>11</sup>

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The forerunner of modern numbers gambling was a game called "policy." Policy originated as a sideline for the 18th century London lottery houses and was introduced in America late in the 18th century as an adjunct to lotteries. While lotteries were used as fundraisers for governments and charities, policy was operated as a sideline for the profit of the lottery company alone.

By the time of the Civil War, most State lotteries had been outlawed, and policy, which had never been legal, began to develop independently. Like many of the earlier lotteries, policy was based on drawing numbers (from 1 to 78). Normally, 12 numbers were drawn, and players bet that from 1 to 4 numbers of their choosing would be

among the 12 drawn. Even before the Civil War there were hundreds of policy shops in New York City, and the game had developed its peculiar argot and mystique. Dream books were widely sold, designed to enable the customer to choose his number for the day based on the dreams he had the night before. Because policy fed on numerous small bets, it was especially popular among the poor. Blacks had a reputation as particularly avid fans.

Policy was the first form of gambling to become syndicated. Early policy operations were coordinated by backers who financed local policy shops. Because bettors chose their own numbers, it was always possible that a small-time policy operator might on any particular day have more bets on winning numbers than he was able to pay off. As early as the Civil War, a group of politicians, gamblers, and businessmen in New York City put together

a \$1 million fund to back the policy shops of the city, provide protection, and gain control of the Kentucky lotteries from whose daily drawings the winning numbers were determined. The syndicate soon collapsed because of internal bickering, but syndicate control remained the norm. By 1900, a single policy operation in Chicago would have over 100 policy writers at stores, saloons, and barbershops to collect the bets and bring them twice daily to the headquarters, where the winning numbers were drawn from a wheel. The bets were small, but when a single syndicate pooled the bets of thousands of players, the profits for the backers could be substantial. And the policy runners or writers, operating on commission, could be assured of a steady income.

Two factors reshaped the structure of policy gambling in the 1920's.

The first was the introduction of numbers as a rival gambling game that appealed to the same players. In the new game, a player bet on a number between 1 and 999. There was, of course, one chance in 999 of winning, while the numbers syndicates usually paid off at a rate between 400 to 1 and 650 to 1. At first the winning number was based on a figure published each day: for instance, the last three digits of the total stocks traded on the New York Stock Exchange. By the 1930's, however, the number was determined in a complex way from the results of three races at a designated racetrack—that system still is in use today. Apparently numbers was first played in New York City in the early 1920's. Because West Indian blacks predominated among the early entrepreneurs in Harlem, it is possible that they introduced the game. By the end of the 1920's, numbers had replaced policy in New York and Philadelphia. In Detroit, although numbers was clearly growing, both games continued through the 1930's. In Chicago, by contrast, numbers never gained a foothold, so that policy continues to dominate there even now.

A second, more important development was the rise of black-controlled numbers or policy syndicates in the 1920's. This in turn was linked to the growth in major northern cities of ghettos dominated by blacks and the subsequent development of local black political organizations, with precinct captains and ward leaders capable of organizing voting and exerting political influence. Black entrepreneurs headed policy or numbers syndicates to service customers in the ghettos, and there was often a considerable overlap between local political organizations and gambling syndicates.

In some cities black policy and numbers operators eventually were forced—through coercion or financial necessity—to form alliances with ex-bootleggers, while in other areas policy and numbers continued under black control. In Philadelphia, even before prohibition had ended, two bootlegging groups had become the kingpins of numbers gambling. Ultimate control over numbers was fought out in the mid-1930's among groups of ex-bootleggers. In New York in the early 1930's, the important numbers operations of Harlem generally fell under the control of bootlegger Dutch Schultz. But elsewhere in the city the pattern was more diverse and the influence of bootleggers less clear. In Detroit and

Chicago, on the contrary, numbers or policy developed strong roots in the black community and powerful political protection. Not until the post-World War II period did independent policy operations in Chicago—black and white—finally fall under the influence of ex-bootleggers. In all cities, when bootleggers or ex-bootleggers became involved in numbers or policy, the mechanism was established through a partnership. The original operators or their associates continued as managers and partners. The bootleggers, on the other hand, often provided a variety of services in return for a share of the profits. These services included political protection, financial backing, regulation of competition, and legal representation in case of arrest.

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## Numbers Gambling Today

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Numbers gambling began in the cities and today remains a uniquely urban phenomenon. The game is known by various names, including policy, mutuel, and bolita, but its basic principles remain constant.

The structure of numbers gambling that developed following prohibition is basically intact today, with some numbers rings operating independently and others under the control of, or in alliance with, organized crime. Numbers has always been one of the most visible forms of illegal gambling because so many individuals are involved in its daily operation. A prerequisite to the continued success of this type of gambling is police protection: Numbers has often been cited as a prime source of police corruption.<sup>12</sup>

**MECHANICS OF THE GAME.**<sup>13</sup> On the basis of superstitious beliefs, hunches, dreams, or other criteria, a person selects a number to wager on. The most popular game uses a 3-digit system in which the bettor may choose from 1,000 possible numbers, including "000." Players also can wager on 1 or 2 of the 3-digit numbers. This is called single or double action, and the payoffs are reduced accordingly.

The wager is then placed with a numbers **writer**, **runner**, or **seller**—all terms for the person who accepts numbers wagers directly from bettors. Many writers work in the numbers business as a sideline; their primary employment may be in restaurants, factories, stores, gas stations, or any other place that affords contact with the public. Writers are paid a percentage—generally 15 percent to 30 percent—of the gross volume of the wagers they accept. Frequently they also are tipped by winning bettors. Writers are, more often than not, the single largest bettors in the numbers game, using their percentage (i.e., the bank's money) as the basis for their wagering. Wagers collected by the writer go to a **pickup man**, who forwards them to the next level in the hierarchy, the **bank**. This is the central headquarters or processing office; there, the winning number and number of winners are determined, wagers are tallied and recorded, and, where necessary, decisions are made regarding layoff on heavily played numbers and other matters. In the larger operations, wagers may be carried



from the pickup man to another intermediary, **the controller**, who has certain decisionmaking responsibilities. In any event, the top level of business is always the bank.

Payoffs on the three-digit system are 600 to 1; this is where **vigorish**, or profit to the operators, is derived. The payment for the winning wager, or "hit," is made at a rate far lower than the risk assumed by the player (i.e. 999-1). While this would appear to leave about 40 percent in gross profit to the operator, it must be remembered that the administrative expenses incurred in the operation of a numbers business are substantial. The profit margin after expenses ranges from 7 percent to 10 percent of gross wagers.

Payment to winners may either be made directly by the writer and deducted from the amount he must pay the bank, or be made to the writer by the bank after he has turned in his tally. The bank usually settles its accounts with the writers on a weekly basis.

In a 2-digit system (policy), there are two basic variations, one utilizing 100 numbers and the other 78 numbers. In both versions the payoffs are 60 to 1. There are many different types of wagers that can be placed, involving combinations of numbers, parlays, etc., but these differ widely from one region of the country to the other. There are also varying sources for the winning number but, generally, the most popular are those that can be readily verified by the players. Consequently, the data from the financial pages, parimutuel handle figures, and racetrack payoffs are most often used in combinations to provide the winning daily number. Some games utilize a policy wheel, and the winning digit is determined by a drawing, akin to a lottery. Others utilize some physical activity, such as rolling numbered balls toward a designated spot, to arrive at the number.

**PROFILE OF THE NUMBERS PLAYER.** Data produced by the National Gambling Commission's survey of gambling habits and attitudes (see chapter 4) revealed that the Northeast accounts for the greatest proportion of numbers playing—with participation by 8 percent of the adult population compared to 3 percent for the Nation as a whole. Numbers is popularly thought to be a game

played exclusively by the poor and by blacks; however, the survey shows that this is not the case. Although a far greater proportion of nonwhites play numbers than whites, Italians and Spanish-speaking groups also are overrepresented. Numbers playing shows a general increase with income up to \$15,000, although not so sharp an increase as is found among casino bettors. Virtually all numbers players live within 25 miles of the Nation's 25 largest cities.

Numbers is popularly thought of as a community institution, and the survey lends some support to this perception. Most numbers bettors (about 60 percent) personally know the individual who takes their bets and pays them off. Despite numbers' reputation for dishonesty, most players are confident that they will be paid if they win. Many—21 percent—say they would continue to play the illegal game in addition to playing a legal game if one were legalized, and some—17 percent—say they would play only the illegal game if a legal game were introduced.

Regarding present legal numbers games, only one major factor emerged as necessary to attract current illegal players: the exemption of winnings from income tax. Telephone service and payoffs comparable to the illegal game were also mentioned as desirable features.

The majority of Americans are opposed to legalizing numbers games: Only 22 percent overall favor it, the least support for any form of illegal gambling covered in the survey. Numbers players favor legalization more often (69 percent) than nonplayers, and there is some tendency for residents of lottery States to favor legalization more often than nonlottery State residents (30 percent vs. 16 percent). Consistent with this opposition, most bettors feel some negative societal consequence would accompany legalization; however, they see legal numbers as an effective means of depriving organized crime of its revenue. Further, bettors and nonbettors alike anticipate that a legal game would be substantially more honest than the current illegal games.

Numbers is not available to a great many Americans, and therefore many are not sufficiently informed about the subject to make informed judgments. A major reason people gave for not playing was "don't know about it"—a more frequent response here than for any other game.

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## THE GAMES: BOOKMAKING

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### Development of Bookmaking

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Horse books came into prominence in the 1870's. Bookmakers were initially licensed by tracks to accept wagers at a particular track facility and paid the tracks a daily fee (usually \$100) for that privilege.

Once established at the track, bookmakers began to open off-track betting parlors in the cities to accommodate players who could not attend the tracks. It was about this time that bookies became syndicated; the growth of their business created a need for financial support, improved last-minute information, and sophisticated methods of

communication. It was through syndication that "wirerooms" became possible; these establishments provided bettors with a place where they could listen to up-to-the-minute changes, the actual running of races, announcement of the winners, and the payoff prices. Western Union facilities were used to wire information from the tracks to the wirerooms, which were equipped with telegraph tickers and, later, telephones. Antigambling sentiment forced the withdrawal of Western Union from its part in the operation, but its spot was quickly filled by privately owned wire services that soon established monopolies over racetrack and sports information services.

One of the most successful wire service operators was

Mont Tennes, a Chicago bookmaker. After Tennes came Moe Annenberg, who in the 1930's succeeded in establishing a complete monopoly over all racing and sports information. Annenberg used his monopoly to extract maximum profits from the bookmakers who were his customers. He not only charged high prices for information supplied by the national wire but eventually sent the information by code. The code could be deciphered only by purchasing the daily wall sheets published by his companies. Following the indictment in 1939 of Annenberg and his associates for tax evasion, organized crime figures began to take over the crucial wire services business. Associates of the old Capone gang in Chicago gained control of information service in that area. Elsewhere in the country, other ex-bootleggers began muscling in on this aspect of the business. Organized crime also gained a foothold in the bookmaking business by taking control of certain layoff operations.

Wire services and bookmaking parlors remained virtually untouched by law enforcement until the 1950's, when new Federal legislation succeeded in closing the parlors and forcing bookmakers to operate more clandestinely. This legislation, coupled with post-Kefauver prosecutions involving nonpayment of Federal excise and wagering stamp taxes, further augmented the Federal effort against this type of gambling and underscored the prevailing sentiment—which persists today—that the States by themselves are unable to deal adequately with the gambling problem due to a lack of money and manpower and the pervasiveness of gambling-related corruption in some local police departments.

**HORSE BOOKMAKING TODAY.** The basic information needed by both bookmaker and player is derived from a "scratch sheet," which provides such facts as jockeys, post positions, times of races, probable odds, and handicappers' picks. Winning bets placed through a bookmaker are paid at the same payoff as at the track, with the bookmaker's profit deriving from that portion which, at the track, would go for expenses and taxes. As a rule, a horse bookmaker can gross 15 percent of his wagers and can net approximately 11 percent. As in sports betting, layoff facilities are utilized by a bookie who receives an excess of wagers on one horse. Depending on the odds, layoffs are made at the track itself, in the form of a large wager on the bookie's favored horse; this not only enables the bookmaker to use track winnings for making payoffs but reduces the amount of the track's potential payoff. (See chapter 5 on Parimutuel Wagering and Off-Track Betting for a discussion of the survey data regarding illegal horse bookmaking.)

**SPORTS BOOKMAKING.** In terms of gross volume of betting, sports wagering is today the number one form of illegal gambling in the United States. Sports bets, whether placed with a bookie or between social acquaintances, are most often placed on football, baseball, basketball, and hockey games, and, less frequently, on events such as prizefighting and golf. Sports bookmaking originated as a sideline; many horserace bookmakers accepted wagers on sporting events as a courtesy to their wealthy customers. It was not until radio and television began bringing sports

contests to millions of Americans that this type of wagering began to dominate. Today, there are many sports bookmakers who accept horserace wagers only as a courtesy to their best customers.

The sports bookmaker has been defined as a "broker, bringing together money on both sides of a sports contest, hopefully in such a manner that the losers' money will be more than sufficient to cover payments to winners."<sup>14</sup> This balance is achieved through the handicapping process, and use of the "line" or point spread. The beginning line is quoted in whole figures, and indicates the actual expected difference in points scored between the teams. Half-points are utilized to move the line based on the amounts of money being wagered. The line itself consists of a number of points either subtracted from the favorite's anticipated score or added to the underdog's anticipated score. For example, if the Miami Dolphins are favored to win over the Baltimore Colts by one touchdown, the line is quoted as "Miami 6." Consequently, a wager on Miami would be a winning wager only if Miami won by seven or more points (i.e., the "6" is subtracted from Miami's final score).

During football season, the "early line" is posted every Tuesday in the legal sports books in Nevada; it is received shortly thereafter by illegal bookmakers who of necessity maintain interstate communications for this purpose. The line continues to fluctuate up until the beginning of the game, reflecting not only updated information about conditions pertinent to the team (i.e., weather conditions, player injuries, etc.) but also reflecting the status of the "action," or the bets placed. In fact, a major sports bookmaker will only move the line in response to the movement of money.

In order to balance his books, a bookmaker must make use of two methods: line changes and "layoffs." Line changes operate as follows: If a preponderance of wagers is being placed on Miami at 6, the line can be moved to 6½, thereby attracting more wagers to the opposing team. A bookmaker must move cautiously when changing a line, however, to avoid being "middled"—a situation wherein he would have to pay off both sides, since bets made with different point spreads would both have to be honored.

Laying off wagers is another method by which a bookmaker can achieve a balanced book. If Bookie A has an overabundance of wagers on one team, he can lay off by calling another bookmaker and placing the excess wager with Bookie B. Prior to the passage of Federal statutes prohibiting interstate wagering, layoff bookmaking was conducted to a large degree across State lines and, although those statutes served to break up most of the large interstate layoff businesses, many interstate telephone calls are still made for layoff purposes through increasingly devious methods in violation of Federal laws.

Some additional terminology utilized in sports wagering includes "off the board" and "in the circle." The former indicates that no wagers are being accepted on the particular sports contest; the latter means wagers are to be accepted with caution. These terms are generally utilized when there is a lack of information about critical



players and their starting capability, or if the teams involved have already been eliminated from division playoffs.

Baseball wagering uses several lines, as follows: The line least favorable to the bettor, and therefore the one given by bookies to inexperienced players, is known as the "40-cent line." If the teams in a game are evenly rated, the game is referred to as an "even-money" game or "pick-'em." However, a better does not place an even-money wager; the price quoted as to \$100 is 110-100—that is, the bettor may choose either team, but he must wager \$110 with the bookie to win \$100. By accepting one bet on each side, the bookie receives \$220; whichever side wins, the bettor choosing that side wins \$210 and the bookie retains a \$10 profit. In games that are unevenly matched—i.e., where one team is favored—the bookmaker simply varies the amount of money which a bettor must wager to win a specified amount. For example, if the Boston Red Sox are favored 8 to 5 over the New York Yankees, the bookmaker will quote the line as "40-80, Luis Tiant (pitcher)." Therefore, to wager on the Sox, a bettor puts up \$180 to win \$100 and to wager on the underdog requires a \$140 bet to win \$100. The \$40 differential is known as the 40-cent line, and is the line generally quoted to the small bettor.

A heavier bettor may generally utilize the "20-cent line," which operates on a \$20 differential; in the even-money example, \$105-\$100 is used instead of \$110-\$100. In the 8 to 5 example, the wager would be \$160 to win \$100 on the Red Sox and \$140 to win \$100 on the Yankees, quoted as "40-60, Tiant." The line being quoted in Las Vegas presently is the 20-cent line. All major bookmakers quote the line with the name of the pitcher, rather than the team, since that is the critical factor; if a bookmaker does quote teams, he is generally dealing the higher or 40-cent line and is handling inexperienced customers.

The more favorable "10-cent line" is quoted by larger bookies to heavy players or smaller bookies seeking layoff outlets, and operates on a \$10 differential. The "5-cent" or "nickel" line, using a \$5 differential, is generally only used between larger bookmakers attempting to utilize each other's layoff capabilities.

Regardless of the type of game being played, there are various types of wagers that can be placed. In addition to a straight bet on the anticipated winner, there is also a "parlay" bet, which is a wager on two or more teams, all of which must win for a bettor to collect; a "round robin," in which a wager is placed on three or more teams in combinations of two-team parlays; a "teaser," which is a parlay bet at a more favorable point spread with reduced winnings; and an "over and under" bet, where the wager is that the total scores of both teams will be over or under a stated figure. A further note regarding the jargon utilized by both bettor and bookie: Amounts of wagers are rarely stated in their actual terms. That is, the term "a dollar" is used to refer to a \$100 bet, "a nickel" is \$500, and "a dime" is a \$1,000 bet.

As can be seen from the above discussion, sports wagering is an extremely sophisticated and complex form of gambling. Nonetheless, fewer persons need to be utilized

in a bookmaking business than in a numbers business. This factor, combined with the extensive use of telephone communications, makes bookmaking a much less visible form of gambling and, until the fairly recent advent of electronic surveillance capabilities, much more difficult to control from a law enforcement standpoint.

The general format of a bookmaking business begins with a bettor utilizing either the telephone or a middleman to place his bet with a bookmaker. Middlemen generally work on a percentage basis, like the numbers runners. A large bookmaking operation may employ clerks to man telephones at different locations, in attempts to avoid electronic surveillances. Persons providing line service and layoff outlets are also necessary features of any bookmaking business, and the latter are generally contacted by telephone. Therefore, a telephone system of communication continues to be the most essential element of the sports wagering business. Without it, the larger businesses could not survive.

**SPORTS CARD WAGERING.** A variation of standard sports betting known as pool cards, sports cards, or parlay cards is attractive to the small bettor who, because of the low dollar volume of his bets, is rejected as a client by the sports bookie.

A pool card provides a complete listing of games with a given point spread for each weekend sports event (usually professional football games). Cards are printed at the beginning of each week for distribution no later than Tuesday; thus, the "line" in this type of wagering does not have the flexibility to reflect changes occurring later in the week. Furthermore, the line on a sports card never is quoted in half-points; a tie game results in a loss to the bettor. Distribution generally occurs through persons or places with ready access to the public; in fact, the operational elements of a sports card business more closely resemble those of a numbers business than of sports bookmaking.

Until shortly before game time, wagers are collected along with the bottom, or tearoff stub, of the card. As in numbers, runners are used as agents to pass out cards, collect wagers and stubs, and make payoffs to winners. A typical bet involves the selection of three or four teams; wins are determined on the basis of the printed point spread, and ties are considered losses. Law enforcement estimates of the average wager placed on this type of game are between \$1 and \$10.

**PROFILE OF THE ILLEGAL SPORTS BETTOR.** According to the Gambling Commission survey, the "typical" customer of illegal bookies resides in a Northeastern or North Central State, is a white male between the ages of 18 and 44, has a college degree or some college education, and earns more than \$10,000 a year.

The average amount wagered per bettor is higher for sports betting than for any other form of gambling. Players are also uniquely firm in their loyalty to the illegal wager. Only 50 percent of those who currently bet with a bookie would be willing to move entirely to a legal system if one became available. The most important barrier to their accepting legalization appears to be the payment of income taxes on winnings.

Only 20 percent of the population favored legalization of betting on sports events with a bookie. Apparently, some respondents reacted to the generally negative image of bookies rather than to the notion of legalized sports betting itself: When respondents were asked how they thought a system of sports betting should be run if it were made legal, a higher percentage felt that sports betting should be run by government employees (as opposed to government-regulated private business).

Attitudes were uniformly, but only slightly, more positive toward sports card betting than betting with bookies. Thirty-two percent favored legalization of these. As with most forms of gambling there were sharp regional differences, with the South markedly more negative toward it than other regions.

Sports bettors in general and illegal sports bettors in particular are far more likely to attend sports events than other groups. Moreover, sports bettors indicated that the presence of legal sports betting would not be likely to change their attendance patterns.

Given the American passion for sports, it is interesting to note that betting on sports did not rate particularly high on a list of gambling forms rated for their excitement. The general population rated betting on sports with friends as 6th on a list of 13, and betting with a sports bookmaker as 12th. Even among those who bet with a bookie, gambling with bookies rated 12th, very much below betting with friends. These ratings support the general finding of the survey that the excitement of a gambling form depends on the degree of social interaction associated with it.

Respondents perceived all sports as generally honest. High school sports events were seen as the least likely of 10 betting events to be fixed. College sports events were also rated as very unlikely to be fixed; professional sports were rated as number 5 on the list of 10. As is the case with most forms of betting, persons who bet on a particular type of sports event rated it as even more honest than the other types.

Respondents generally saw a greater danger of corruption of sports events when betting is legalized than they did with legalization of any other kind of gambling.

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## THE GAMES: ILLEGAL CASINOS<sup>15</sup>

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Casino games were introduced in this country by early European settlers who were accustomed to the plush gaming parlors found in Western Europe. As stated above, the first formal casino in the United States opened in New Orleans in 1827. It soon flourished and became the model for other such "carpet joints," as the lavishly decorated casinos were called. Establishments catering to the lower classes were called "sawdust joints."

In the East, the first casinos were built in Saratoga, New York, and on the east coast of Florida. These early casinos were generally operated by independent entrepreneurs; syndication came later. With the repeal of prohibition in 1933, former bootleggers developed a renewed interest in gambling ventures. During the 1930's, illegal casinos were established in every major city. The most well known were those in Newport and Covington, Ky., Hot Springs, Ark., and along the east coast of Florida.

In 1950, the Kefauver committee investigations widely brought national attention to the existence of many types of illegal gambling endeavors, including illegal casinos. The investigations spurred decisive action by local law enforcement officials and politicians eager to protect their

reputations and political futures. Most of the illegal casinos were either forced to close or were driven underground. Most of those that remained were eliminated in the early 1960's following the passage of a series of Federal statutes dealing with interstate gambling violations.

The success of these statutes notwithstanding, a few small illegal casinos are still known to exist. Called "flat stores," these establishments handle a relatively small volume of business compared to their predecessors and generally offer only blackjack and dice games. Because they operate without bulky equipment, their location may be hastily changed if necessary. Since the games at illegal casinos often are operated dishonestly, the preferred customers are those with limited gambling experience.

The recent "rediscovery" of the ancient game of backgammon has attracted the attention of professional gamblers as well. Backgammon tournaments, although legitimately sponsored and legally operated, provide the opportunity for large wagers to be made on the side. Like pool and poker, backgammon has its share of skillful hustlers who win great sums of money from their unsuspecting opponents.

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## CONCLUSIONS AND RECOMMENDATIONS

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### The Sports Betting Controversy

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The Commission's recommendations concerning illegal forms of gambling center upon sports card betting and sports-by-event betting. Numbers and off-track horserace wagering are legal in certain States, and discussions of these forms of gambling appear in chapter 5.

In terms of gross volume, sports card wagering is a considerably less lucrative illegal venture than sports-by-

event betting. Yet it is a form of gambling indulged in by many people, a substantial number of whom do not know it is illegal. The amount of money wagered per card is small. Such wagering should be an easy game for a State to operate, control, and regulate.

In contrast, sports-by-event wagering, if run by a State, entails enormous problems. It is assumed that proponents of this form of gambling legalization would stress the same justifications for it that have been espoused by

proponents of other forms of legalized gambling—i.e., the raising of revenue and the combating of organized crime.

Sports wagering, however, falls considerably below other types of wagering in terms of the revenue it produces for the operator. The takeout (money retained by the operator) presently in effect in the illegal marketplace averages 4.6 percent; the survey conducted by this Commission estimated that the optimal takeout in legal sports betting would be 7 percent—that is, 7 percent is the maximum takeout sports bettors would tolerate before returning to the higher payouts offered by the illegal game. Obviously, the ability of a legal game to compete with its illegal counterpart is critical to its success, but in sports betting the legal game has serious disadvantages. Even assuming a change in Federal tax policies (as the Commission recommends in chapter 2), there remain the issues of telephone betting and extension of credit. Additionally, the relatively high administrative costs inherent in State-operated gambling operations must be considered. These costs would preclude such incentives as the extension of credit. Furthermore, it is difficult to see how a State could efficiently operate any kind of layoff system. There is also competition from social wagering—wagering with a friend or through an office pool. These issues are important not only to those seeking effective revenue-raising methods: They are even more important to those who view legalization of sports betting as an attack on organized crime.

Law enforcement authorities maintain that illegal gambling provides the largest single source of revenue to organized crime. Law enforcement authorities use the term “organized crime” in its broadest sense, rather than the narrow definition adopted by the Commission. Proponents of legalized sports betting argue that legalization would draw customers away from the illegal bookies, thereby decreasing the revenue supplied to the criminal element. However, the critical factor once again becomes the legal game’s ability to compete. Even Nevada’s State-licensed bookmakers are unable to compete with their illegal counterparts because of the existing tax structure: The Federal excise tax, if passed on to the players, causes them to turn to the illegal books; if it is absorbed by the legal bookie, he may find himself unable to make a profit. In addition, taxation of the winnings as income acts as a disincentive to deal with the legal operation. Another argument against licensing of bookmakers could be made on the grounds that criminal elements would involve themselves in the legal operation, either by exacting tribute from the legal bookies or by providing increased illegal competition in States with legalized bookmaking, where a new market for gambling may be created by the legal game.

The commissioners of professional sports and the directors of amateur athletic associations testified before the Commission on the subject of sports betting.<sup>16</sup> They are vehemently and unanimously opposed to any form of legalization of sports betting, including sports cards. Their primary objection is that legalization of wagering would alter the character and ultimately the integrity of the sporting event. It would do so, they claim, by redirecting

the interest of the fans from the physical conduct of the game to their monetary stake on the outcome. The point spread, rather than a win, would be the more important factor to a fan who had made a large wager. Other serious concerns expressed by the athletics spokesmen involve potential betting by players and the possibility of attempted fixes. Still another concern is that legal betting may appear to affect (or perhaps actually affect) player performance: An athlete who drops a pass (or misses a basket, or strikes out, etc.) may be accused by the betting fan of having been bribed to do so deliberately in order to meet (or exceed) the point spread on a game.

While the Commission recognizes the desire of professional and amateur sports leagues to keep their games free from even the appearance of scandal, it is clear that—given the intensity of illegal wagering that exists today, primarily on professional football—all of the concerns noted above already exist today.

The likelihood that a legal betting system would give rise to an attempted “fix” more readily than an illegal betting system does not appear to the Commission to be a reasonable assumption. The position of the sports industry seems to be that these problems are controllable with illegal wagering but would skyrocket with legalization of wagering; the Commission sees no basis for that prognosis.

Furthermore, despite its vocal opposition to legalized sports wagering, the sports industry has not assumed its proper role of leadership in controlling peripheral activities that enhance illegal wagering. For example, much of the pregame discussion by sports personalities and broadcasters deals with forecasting the outcome, the point spread, weather conditions, injury reports, and other factors that might influence the outcome. Surely this does not discourage or turn away the attention of a bettor with an illegal wager at stake.

Despite these inconsistencies in the sports industry’s announced position, the Commission does not favor legalization of sports-by-event wagering. Certain other arguments dictate the opposite position.

One issue that appropriately has been raised by the professional leagues regards their proprietary interest in their multimillion-dollar product and the fear that this product may be purloined by individual States without any obvious attempt at remuneration. The Commission leaves to the courts the solution to this substantial controversy and notes only that Congress may be faced with devising a national solution in the future. Certainly one can imagine the present multi-State system of franchises being judged as being of sufficient national concern to merit further congressional attention.

However, one issue that the Commission considered to be a major concern and of particular interest to the sports industry was only implied in testimony by industry witnesses—that is, the danger that legalized sports betting would cause a State government to become a partner in the operation of the game itself. This becomes clear from an examination of other sporting events in which the State has become involved. States license gambling events, such as horseracing, and because the granting of licenses is considered a privilege, States claim the right to tax and

regulate gambling licensees as they see fit. Understandably, sports teams do not want to find themselves eventually falling within this category of “privileged” licensees. Based on experience with other forms of licensed gambling, one can envision a situation in which athletes are subjected to pregame or postgame drug testing (as horses and dogs are) so that the betting public can be assured that no unfair methods are being used by one team or individual to gain a competitive advantage. Perhaps, too, athletes themselves would be licensed, as jockeys currently are, and State stewards required to be present at every game to act as referees and review controversial plays. Certainly the sports community is not ready to accept this type of transformation, and the Commission believes that most sports fans—bettors and nonbettors alike, as well as the overwhelming majority of the American public—would find it unacceptable as well.

Although it has been the Commission’s consistent belief that each State should be permitted to make its own determination by voter referenda as to legalization of all other forms of gambling, the Commission feels that States should not undertake any kind of legal sports wagering, given existing Federal tax policies. In addition, even if those tax policies should be changed in response to this or other studies, the Commission believes that there has been inadequate debate on the subject of legal sports betting and, clearly, inadequate opportunity for the voting public to acquaint itself with the issues and develop an informed opinion.

The same is true regarding sports card wagering, also known as sports pools. Although the Commission accepts the U.S. Department of Justice’s unofficial categorization of a sports pool as a lottery (consistent with the discussion in chapter 5), it does not believe that voter ratification of a traditionally designed lottery implies automatic acceptance of a sports pool. The Commission believes the sports pool issue should be debated and voted upon separately. This is not to say that the institution of each new game by an existing lottery need be voted upon; the question of separate referenda should of necessity be one of good faith, coming into play only when there is a change in the basic nature of the game.

If the Commission’s views on this point are not accepted, however, and legalization of sports wagering becomes a reality, the Commission strongly recommends that there be an absolute prohibition against the inclusion of wagering on amateur sporting events in such legalization. While the Commission recognizes that some amateur events already are the objects of illegal wagering nationwide, it cannot condone the utilization for wagering purposes of educational institutions and similar organizations dedicated to the improvement of youth.

This opinion is in part predicated on the fact that young

athletes of high school and college age are far more impressionable and therefore are in greater danger of being subjected to the temptations of player corruption. Additionally, unlike professional sports leagues, particularly the NFL, amateur athletic associations do not have enforcement or investigative capabilities which would enable them to maintain sufficient safeguards.

In summary, the Commission has reached the following conclusions regarding the legalization of sports betting:

- The potential for raising revenue is much lower in single-event sports betting than in other types of wagering, due to the low takeout. Any attempt by a State to raise the takeout rate above that used by illegal bookmakers would drastically reduce the ability of the legal game to compete with its illegal counterpart.
- Competitive elements such as extension of credit and telephone betting could not readily be provided by a State-run bookmaking operation.
- Existing Federal tax policies constitute the largest single obstacle to a competitive sports bookmaking operation.
- The fears expressed by the various commissioners of professional sports regarding the increased potential for fixes, player betting, and change in the integrity of the sporting events in the event of legalized sports betting are exaggerated in view of the extensive amount of illegal wagering already taking place today on professional team sports.
- There is a real danger that a legalized sports wagering system would bring with it substantially increased government involvement in what today is an essentially self-regulating private industry.
- Team owners have a legitimate proprietary interest in their sports, and the courts must determine whether a legal sports betting system violates this interest.

In view of the above findings, the Commission recommends the following:

**States should not undertake the legalization of single-event sports wagering under the present structure of Federal taxes.** However, even if tax policies are amended consistent with the Commission’s recommendations in chapter 2, **the Commission believes that the issue of legalized wagering on sports events should be the subject of extensive debate to allow the voting public to form an educated opinion.** In the event that a State does legalize sports wagering **it should incorporate into its enabling legislation a prohibition against wagering on amateur sporting events.** Although the Commission makes no specific recommendation against sports card wagering, **it believes that States choosing to institute this form of wagering should do so only following a voter referendum and not merely as an addendum to an existing lottery.**

## FOOTNOTES

<sup>1</sup> Chafetz, Henry, *Play the Devil* (New York, Clarkson N. Potter, 1960), p. 18.

<sup>2</sup> Asbury, Herbert, *Sucker's Progress* (Montclair, N. J., Patterson Smith, 1969), p. 211.

<sup>3</sup> *Ibid.*, p. 290.

<sup>4</sup> For a discussion on the relationship between bootlegging and gambling, see Haller, Mark, "Bootleggers and American Gambling," contained in a separate appendix volume.

<sup>5</sup> Katcher, Leo, *The Big Bankroll; The Life and Times of Arnold Rothstein* (New Rochelle, N. Y., Arlington House, 1958), p. 9.

<sup>6</sup> U.S. Senate Committee to Investigate Organized Crime in Interstate Commerce.

<sup>7</sup> U.S. Senate Hearings on Organized Crime and Illicit Traffic in Narcotics.

<sup>8</sup> Testimony of Frederick C. Fehl, Acting Assistant Director, Federal Bureau of Investigation, May 10, 1976.

<sup>9</sup> Blakey, G. Robert, "Concurrence," in *Report of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance* (Government Printing Office, 1976), pp. 190-192.

<sup>10</sup> Hearings were held in Boston (April 9-11, 1975), Philadelphia (May 28-29, 1975), Detroit (June 24-26, 1975), Las Vegas and Carson

City (April 18-21, 1975), Phoenix (August 22, 1975), Chicago (September 23-24, 1975), Miami (November 24-25, 1975), and Cleveland (January 16, 1976).

<sup>11</sup> This section and the historical section on bookmaking have been excerpted and edited from Haller, op. cit.

<sup>12</sup> See chapter 3 for a discussion of the problems of illegal gambling and police corruption. In addition, the appendix contains two papers on the subject of gambling corruption: "Gambling-Related Corruption," by Carol Duncan; and "Gambling Enforcement and Police Corruption," by Jonathan Rubenstein.

<sup>13</sup> The material describing the mechanics of numbers and horse and sports bookmaking is based on confidential information provided to the Commission by illegal gambling operators who requested to remain anonymous.

<sup>14</sup> FBI definition in "Gambling Technology."

<sup>15</sup> Scarne, John, *Scarne's New Complete Guide to Gambling* (New York, Simon and Schuster, 1974), pp. 226-241.

<sup>16</sup> The Commission heard testimony on February 19 and 20, 1975, from officials of the National Football League, Major League Baseball, the National Hockey League, the National Basketball Association, the National Collegiate Athletic Association, and the National Junior College Athletic Association.



# SEPARATE VIEWS

## STATEMENT OF SENATOR JOHN L. McCLELLAN

The Commission on the Review of the National Policy Toward Gambling, created by Congress in Title VIII of the Organized Crime Control Act of 1970, has concluded its three years of study on the subject of gambling in the United States. The Commission was charged with the duty to:

... conduct a comprehensive legal and factual study of gambling in the United States and existing Federal, State, and local policy and practices with respect to legal prohibition and taxation of gambling activities and to formulate and propose such changes in those policies and practices as the Commission may deem appropriate.

The task has now been completed on this complex subject which evokes strong feelings and varying viewpoints from important segments of our society.

I personally question the wisdom of the trend in this country toward legalizing big business gambling operations—whether conducted by State agencies or private parties under State regulation. On the other hand, I completely agree with the conclusion of the Commission that gambling policy is a matter best left to the individual States to determine for themselves within their borders, and that Federal involvement should generally be limited (1) to preventing one State from imposing its gambling policies on another State and (2) to dealing with matters of obvious national concern, such as organized crime or large-scale illegal gambling.

On the whole I believe this report makes an important contribution to the body of knowledge and reasoned policy choices with respect to gambling to be considered by the people of the United States and their governmental representatives. As with any detailed report reflecting the consensus of persons with varying points of view, I have reservations about some of the conclusions and recommendations of the Commission.

For example, although it is probably inevitable in a report of this type, most of the considerations and recommendations follow a pragmatic approach to gambling policy without much emphasis upon the moral and social implications and traditions of this country. These are judgments that must be left to the legislative bodies. I believe the States should and will consider these implications and traditions for their own people as they develop their policies toward gambling.

In addition, I cannot support the Commission's recommendation that legitimate gambling operations be given a favored tax treatment over income derived through

other labors. My position comes from a real skepticism about the proposition that the war against illegal gambling can be successfully waged by increased legalized gambling and my feeling that traditional work values in this country will not tolerate elevating gambling activities to an advantage position over income earned by honest endeavor. In my judgment, the way to minimize illegal gambling is for the government to vigorously prosecute those who violate the law, and for the judges to impose significant sentences that will be calculated to deter the crime rather than make the penalty so low that it can simply be chalked up as a cost of doing business.

Moreover, I believe there may well be a Federal role in regulating, and perhaps minimizing, large-scale interstate or multistate gambling operations regardless of the internal policies of the individual States. I do not see this as a violation of the principle that States should be permitted to determine their own gambling policy within their own borders. Consequently, the Commission's critical comment on the current law limitation on lottery-related mailings to addresses within the borders of the State conducting the lottery and comments on H.R. 14071, introduced in the 94th Congress, to prevent interstate wagering are directed at issues that cannot, in my judgment, be summarily resolved against Federal involvement by simply invoking the State-dominance principle.

Similarly, I have reservations with respect to the Commission's recommendation that a Federal statute be enacted to expressly grant to States the power to regulate gambling within their borders—a power they already have consistent with Federal statutes and the Constitution. If the courts should unduly restrict State gambling policies under the commerce clause of the Constitution, the Congress can act on a knowledgeable basis with respect to the interstate commerce implication then involved.

The Commission report uses the term "organized crime" or similar phrases throughout, particularly as a basis for Federal involvement in gambling regulations, but seems in chapter 6 to limit this term to the "national syndicate of Sicilian origin, providing many types of illegal services and having international ties, known generally as the Mafia or La Cosa Nostra". While the Sicilian model may be the most notorious form of organized crime, this definition is much too narrow for the practical application of organized crime controls in the field of gambling and other illegal activities. The Commission recognizes as much in specifically approving Federal intervention to control illegal gambling cartels and syndicates which systematically

use corruption and violence to further their objectives. In many contexts in the report a broader definition of "organized crime" is obviously intended and the term should be read in that light. I regret that the majority report in chapter 6 has been written in this limited form and in such a way that it invites possible misunderstanding and erroneous interpretation. The Commission notes its belief that members of Congress used the phrase to mean the Mafia. I would only add that in none of the hearings or in the processing of legislation in which I have been

involved has the term been used in this circumscribed fashion.

In summary, I would reiterate that this report adds much to our knowledge of a complex socioeconomic issue. I am of the opinion that we should leave general policymaking to the individual States, and that, on the Federal level, we should refrain from legislating in the area except in instances where one State's gambling policies are likely to infringe upon those of another State, and where identifiable national interests with regard to gambling issues need protection.

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## STATEMENT OF REPRESENTATIVES SAM STEIGER AND CHARLES E. WIGGINS

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The Organized Crime Control Act of 1970 (P.L. 91-452) which was enacted "to seek the eradication of organized crime in the United States" contains twelve titles, one of which authorized the creation of this Commission. The duties of the Commission are broadly drawn and include the study of gambling and the review of laws and governmental policies relevant to gambling. The concluding duty is to prepare a report to the President and the Congress which shall contain findings and recommendations.

After years of activity and expenditure of millions of dollars, the Report is now produced. It deserves careful study by the Congress, and by State legislatures which have primary regulatory authority over most of the Nation's gambling activity.

We cannot join in the Report of the Gambling Commission, however, because of our disagreement with some of its findings and recommendations.

The Report is replete with statements, evaluations, conclusions, and findings attributed to the Commission, all of which are recited as if each were a fact. In fact, these declarations are the opinions of the Commission staff which drafted the Report and may or may not reflect the view of individual Commissioners. We have no quarrel

with this method of exposition. Many of these statements and conclusions are supportable by evidence and are facts. However, we cannot endorse the accuracy of everything here. For example, it is written in chapter 5 that the Commission "found" that the influence of organized crime in Nevada is "negligible" compared to what ever it was fifteen years ago. This finding and many others herein are nothing more than educated guesses.

The Report contains a good number of recommendations to State governments and the Federal Congress for changes in the laws and policies relating to gambling. We are confident that the Committees of the Federal Congress with the appropriate jurisdiction will consider these recommendations on their merits. However, we feel constrained to say that some and especially those relating to Federal tax law have little merit.

Although we have, by these views, disassociated ourselves from some of the conclusions contained in the Report, it remains, on the whole, a potentially useful document. Whether the expenditure by the Commission of considerable effort and, we believe, an unnecessary amount of money, will in the final analysis be justified, depends upon the use to which the Report is put. Of this we are sure: it should not be assigned to a library shelf to collect dust.



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